

SOCIAL JUSTICE IN THE ANCIENT WORLD

*K. D. Irani
Morris Silver
Editors*

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Edited by

K. D. Irani and Morris Silver

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Preface

This volume resulted from a conference on Social Justice in the Ancient World held at the City College of the City University of New York on March 10, 11, and 13, 1993. All the papers read at the conference are published here, with the exceptions, regretfully, of H. Z. Szubin's "'Law and Order' and 'Law and Equity' in the Ancient Near East and in the Bible," R. Garner's "'Lawless Women in Classical Athens,'" and Baruch A. Levine's "'The Social Parameter of Biblical Law: Kinship and Justice.'"

The concept of social justice is one of the more influential ideas in the annals of human social existence. It arose in social consciousness probably at the dawn of civilization and affected the formation and transformation of social structures and legal institutions throughout history.

The effect of this idea on modern life has received detailed attention. But its influence in ancient and relatively early times is deserving of much more attention than it has so far received. It was the desire to redress the intellectual balance that inspired this conference and motivated the participants.

The chapters explore several aspects of the subject—the notion of social justice in the early days of human history; the articulation of social justice in certain ancient civilizations; the social and legal practices implementing social justice in the ancient world; and the legal and socioeconomic consequences of the implementation of schemes of social justice.

Both editors wish to thank Carolyn France and Bertha Zeigler-Pickens for their invaluable assistance. Thanks are also due to Deans Jeffrey Rosen (Social Science Division) and Martin Tamny (Humanities Division) and, most of all, to

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Part I

The Idea of Social Justice: Its Forms and Evolution

The Idea of Social Justice in the Ancient World

K. D. IRANI

The notion of justice is an abstraction emerging from an intuition embedded in human nature, that in any interaction among humans a person should get what he or she deserves. Put in another way, no one should receive undeserved benefits or be made to bear undeserved burdens. This is sometimes called the principle of intrinsic justice. There is another, but related, aspect of justice, often called the principle of comparative justice, requiring that persons be treated equally. This requirement in the Aristotelian formulation states that equals be treated as equals, and unequals be treated as unequals.

Though in very ancient times these principles were widely accepted, the first more clearly than the second, they were not articulated, as we do, in the language of rights. The language of rights, familiar to us, comes to us from Roman law where its roots lay in Stoic philosophy. In ancient society, as far as we can gather, juridical language used concepts such as violation, deprivation, causing of harm, and so forth, calling for remedial action. The judicial authority was called upon to do justice, that is, to restore the person who suffered deprivation or harm to the state that he or she deserved to be in. Juridical thought and language moved in the sphere of restoration to a state seen as the removal of unjust benefits or burdens rather than as the adjudication of conflicting claims in accordance with the rights of the parties.

One of the early applications of this mode of judicial thought appeared in the enforcement of contracts. In ancient practice contracts properly entered into were strictly enforced throughout the ancient world. Nonetheless, when a case of enforcement of a contract arose before a judge and the contract was seen to be egregiously unfair, the judge often altered the terms to make it somewhat fair.

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We do not know what legal arguments were used to achieve this end. Roman law sometimes employed the category of constructive fraud, that is, even though there was no proof of an actual fraud perpetrated on the victim, the conditions of the contract were such that no reasonable person would have agreed to them unless he was subjected to some deception or duress. In ancient Iran a properly solemnized contract was considered inviolate; however, when terms of the contract led one party to profit greatly and the other to suffer a loss, the judge might require the party to share some of his profit with the other party in the cause of righteousness! Such a legal requirement of sharing was not imposed if both parties profited, even if the profits were very unequal.

There were indeed several legal issues that were affected by these ideals, among them, especially, discharge of debts, payment of interest, and slavery. These issues could not be adjusted by judicial interpretation. Specific legal rules had to be introduced through royal edicts or special codes. And these rules were often inspired by religious concepts promulgated by prophets, priestly ministers, or socially minded preachers who discerned the directions coming from the divinity regarding the social conditions of the populace. We find it difficult to comprehend the logic of the new legal requirements because they do not fit into our standard mode of legal thought. But this is the way the idea of social justice probably comes into being, and the logic of its foundations is what we shall explore here.

The postulate of social justice is that society is responsible for the undeserved suffering of its members. From this one may draw the conclusion that society as a whole should repair the deprivation and should construct social means to ensure that such harm is avoided. The logic of this is the following: Some action of X has an effect on the state of Y that constitutes harm or deprivation for Y; if Y's injury can be seen to be undeserved, then X would ordinarily be held responsible and be required to repair the damage. But consider a second example: In the course of ordinary life in a society and for no fault of his own, Y finds himself in a state of deprivation or dire need. Certainly Y has suffered an undeserved burden, but there is no individual who caused it and could be considered responsible and be required to provide the means to repair the damage. This problem was faced by almost every ancient civilization. Since at that period in the history of human thinking the framework of understanding was religious, the question became one of the justice of God, namely, Why did God permit undeserved suffering? A very important practical implication of this question was that since God was just, He wished the social authority to rectify the unjust situation. Thus the demand for social justice as a demand for social, economic, and legal reform appeared originally as a religious demand.

Thus, society was responsible through its social norms, its laws, and its economic practices to create situations where the underprivileged and powerless, would not end up in states of deprivation of their property and freedom. And indeed in many civilizations in the ancient world, particularly in the ancient Near East, there appeared special legal reforms such as debt forgiveness, limi-

tations on the period of slavery, and provisions against usury. These were brought about as specific directions from the divinity, or as a general conception of a just society divinely ordained imposing upon the ruling authority the task of maintaining a just society.

In Babylonian and Egyptian writings we have mentions of actions responding to the needs of those suffering impoverishments or deprivation as pleasing to the divinities. Much more explicitly we find in the utterances of the Old Testament prophets declarations of the demands of the Lord for the protection of the impoverished and the suffering, frequently exemplified by the widow and the orphan. Specific legal protections were created as a result of these divine injunctions altering otherwise traditional legal and economic practices.

The other way in which the demand of social justice is articulated is through the notion of natural law. Natural law was viewed as a divine creation immanent in human and social nature, or it was viewed as a metaphysical reality functioning as a normative force on existence. Often it was both.

The underlying order of reality applicable not just to the physical world, but also as normatively directing the social world, is considered a divine creation. This notion, with varying emphasis appears in most civilizations, it is most dominant as *asha* in ancient Iran and as *dharma* in post-Vedic Hindu thought.

In the ancient Iranian tradition, founded upon the philosophic theology of Zarathushtra, *asha* is the idealized Truth—in other words, it is the normative Truth, the way the world was meant to be, ought to be, and would have been had the evil spirit not infected existence. In the social world with which we are concerned here, the principle of *asha* presents an ideal of perfection and harmony in which no one stands to gain through the deprivation or suffering of another. Clearly, that is not the actual state of society; the ideal of *asha* requires that the organizing power of society bring about through law or social structure and practice, a socioeconomic state in which no one's advantage is dependent upon the suffering of another. What precisely such arrangements would consist of was never formulated. It was left to the intellectual and moral ingenuity of the human mind and character, since, presumably, the specific rules and regulations would be adjusted to the changing circumstances of existence tending toward the progressive improvement of the social condition.

In contrast, the Hindu concept of *dharma* was articulated in specific prescriptions for particular contexts and was presented in a variety of didactic and mythologic sacred and quasi-sacred works. The central philosophic idea underlying these prescriptions was the notion derived from Upanishadic thought that no action of an individual can be viewed and judged solely in terms of the interest of that individual alone. Every action reflects the impulses of a reality greater than the individuality of the agent, and also affects others thereby generating responsibility upon the agent. This thesis presupposes the ultimate interconnectedness of human beings finally rooted in the view that each individual is a manifestation of the Universal Self, and the Universal Self is identical with the Essence of Reality. We are thus embedded in a vast web of mutual responsibility

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in which empathy and compassion call for the minimization of human suffering, but especially to see that we do not add to human suffering by living in accordance with the detailed injunctions of *dharma*.

A different conception of the foundation of justice, metaphysical as well as social, appeared in the Roman world, under the educational influence of Stoic schools. Natural law as developed in Stoicism was an attempt to coordinate social structure to human nature, to make the social structure such that we eliminate or minimize all avoidable suffering and abrasion of human beings seeking to satisfy their needs in society. Such goals were achievable by establishing a legal system that was in accord with our rationally conceived notion of natural justice.

Events of Roman history brought these notions to the fore in an interesting way. When Rome was crowded with aliens, mainly traders, major and minor, litigation naturally arose among them. The Roman courts rightly avoided adjudicating these disputes according to the old patrician *jus civile* that had emerged from archaic, religiously traditionalized practices of a few families but looked rather for the common practices of businessmen and traders from the world over gathered in Rome. The set of decisions and the law that emerged therefrom was considered to be the law commonly applicable to humanity in general and came to be called the *jus gentium*. However, the philosophic development of this process went further, particularly in the hands of Roman lawyers educated in Stoic schools. They applied legal principles that constituted requirements of natural justice that could be discerned by reason reflecting upon human beings engaged in social interaction. This legal system came to be called *jus naturale*.

This system operated with the fundamental concept of rights. A judgment resulted from an adjudication of a dispute viewed as a conflict of rights. An injury was viewed not as suffering or deprivation but as damage to one's interest constituting a violation of one's right. In such a framework the undeserved suffering befalling an individual in the absence of the act of an agent violating the right of a sufferer became by that very fact an unprotected interest and thus beyond legal redress.

In procedural law the doctrine of equality affirmed the right of every individual to seek justice before a judicial tribunal; and in substantive law the doctrine required that rights and responsibilities apply to the actions of each and all in the same way. It is obvious that these ideas promoted an aspect of social justice by erasing the differences between persons arising from the accident of birth or from disabilities inflicted upon one because of one's means of livelihood.

It is worth remembering that in the ancient world, in the Indo-European tradition there was a pronounced tendency to view the population as divided into classes—usually three, but sometimes four. One belonged to a class by birth. Membership in the class determined not only one's social position in communal or ceremonial festivals, but in most aspects of daily living, such as, one's profession or means of livelihood, one's residence and general mode of life. From the point of view of our present discussion, it is important to note that class

membership affected not only liability and culpability, but also approachability to courts for judicial redress.

An act coming before a court calling for judicial consideration would have its construal dependent upon the classes to which the litigants belonged. Such inequality in substantive law was rejected by the Stoic theory of natural justice. It was mainly this principle that led to the emergence of equity in Roman jurisprudence. Similarly, in procedural law, class-based inequality of access to courts was repudiated. These particular aspects of social justice are indeed appropriately called the doctrine of equality before the law. This principle entered legal practice gradually and very unevenly, first in Roman jurisprudence, and then through the widespread impact of Roman law on the civilized world. Its complete acceptance the world over is a matter of very recent legal history.

Surveying the diverse demands that fall under the general notion of social justice, we notice that some of them are included in the category of intrinsic justice, generating rights not recognized till then in the traditional jurisprudence of ancient societies. The correlative obligations to these rights were usually placed upon society, but sometimes upon the individual who was believed to have been unfairly advantaged in the social interaction. Other notions of social justice belong to the category of comparative justice; they generate metalegal principles, called principles of natural law. They are viewed as rules necessitated by the demands for natural justice capable of being grasped by philosophically clear and socially informed human reason. We have also seen the diverse grounds upon which these ideas were based. They extend from the wish of God, to a divinely created ideal Law or Truth to be grasped by the spiritually illumined Good-Mind, a position midway between the divinely inspired voice of conscience and a straightforward rationalism, to finally a moral rationalism in which natural law is discerned as a moral truth.

We now turn to examine the effect of the implementation of prescriptions of social justice on the legal and socioeconomic aspects of society. Economic institutions arise to satisfy the needs of human beings in society for the exchange of goods and services. The practices gradually crystallize into relatively stable patterns. These patterns come to be recognized as mercantile customs by courts when such disputes arise in litigation.

The earliest markets were not created by the political institutions of societies. As civilizations advanced, rulers established market locations, valuable for traders as well as for the rulers who could tax them. They also provided techniques for standardizing weights, measures, and coinage. Most markets were also equipped with a religious or civil institution for authenticating or recording contracts. In the context of our discussion here, the demand for social justice appeared as prescriptions altering the pattern of economic activity of the market. Some of these alterations could be incorporated into new socioeconomic patterns of market activity; sometimes however the alterations made traditional practices dysfunctional. In any case, legal aspects of commercial activity require that they be clear and stable for commerce to flourish. When the stability of legal practices

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is put in doubt and their predictability is reduced by the introduction of new rules of liability, or the extinction thereof, present business activity diminishes, as well as confidence in investments for the future.

Regardless of the disruption in the socioeconomic operations of a society that the implementation of some measures of social justice may have caused, the values inherent in them have been appreciated and progressively implemented in all civilizations. But alongside there have always been reservations about applying the rules of social justice, the intrinsic rather than the comparative, because they entail the imposition of responsibility upon society as a whole or an individual to remedy the undeserved suffering of someone. And though one may feel that the remedying of the undeserved suffering was valuable, one must realize that it is achieved at the expense of society or an individual who has to provide the resources.

This fundamental value conflict is still with us today. It is that in some, though not all, socioeconomic situations the demand for intrinsic social justice and the right to private property become incompatible, resulting in two polar sociopolitical preferences. And what preference for one side may term a worthy act of charity and good conscience, would be viewed from the other side as a confiscatory deprivation of one's property. Such a conflict does not arise in the area of comparative social justice, which, though gradually implemented in the ancient world, has been accepted as an aspect of universal human rights today.

Social Justice and the Subsistence Economy: From Aristotle to Seventeenth-Century Economics

S. TODD LOWRY

Much of the literature from antiquity is concerned with the exploits of kings, chieftains, pharaohs, and emperors. Their power, however, was in part dependent upon the number and competence of their subjects. The establishment of stability and order in such authoritarian regimes was an absolute prerequisite to the irrigated agriculture and craftsmanship upon which they depended and can easily be confused with a system of justice. A modern concept of social justice, however, requires the implementation of some standard of “good” or “fair” rules of conduct toward the mass of the population. An important distinction in this formulation is frequently ignored. Security and stability in possessions and uniformly administered laws contribute to efficient planning and have the appearance of justice; but if such practices are based on the administrative purposes of authority systems, not on the assertable rights of the individual, we are then dealing primarily with *order* and not with *justice* in a modern sense.

In the Old Testament account of Job and his patient submission to the vicissitudes imposed upon him by his God, we find an idealized image of the committed servant for whom *duty to superiors* is the standard for virtuous conduct. Even when well treated, there is no presumption of *rights* in such a social setting. By contrast, we find in the ancient Greek world a clear formulation of a socioeconomic principle of prerogative that seems to have fueled a tradition that has survived and influenced modern thought. This tradition does not begin with the rather terse description of a subsistence economy found in Book II of Plato’s *Republic* and characterized as “a city of pigs” (II, 372d). Plato’s society, with its natural division of labor, grew out of an administrative ordering of the variations in human capabilities. It was primarily a formulation of Plato’s vision

of a hierarchical society ruled by a philosopher-king emphasizing the Near Eastern pattern of “duty to superiors.” It is in Aristotle that we find a synthesis of Platonic and democratic concepts carefully elaborating a mixture of natural and social processes that have influenced political economy and ethics for the past twenty-three centuries.

ARISTOTLE’S THEORY OF THE NATURAL RIGHTS OF THE OFFSPRING

In the opening chapters of Book I of his *Politics*, Aristotle sets up a descriptive classification of socioeconomic processes. He outlines the fundamental interactions of agrarian family life as the source of basic needs. In the family, marriage, supervision of slaves or servants, and the raising of children provide the primary elements of survival, that is, sex, food, drink, shelter, and human continuity. He then recognizes that, in the village system, barter exchange provides for social interdependence, the benefits of specialization, and the division of labor. This hierarchy of increasing complexity in socioeconomic interaction is carried on into a discussion of monetary exchange and, ultimately, usury, which kept this literature in the forefront of ethical-economic-juridical discussion through the Middle Ages and into the seventeenth century. At the same time, in Book VII of the *Politics*, Aristotle presents an often ignored reverse hierarchy of values. The order of physical priorities for society is physical needs (goods of the body), amenities through barter and monetary exchange (external goods), and philosophical and political virtue associated with the culture of the city (psychic goods). These values are sequentially dependent upon one another, but their true virtue is in inverse order, with psychic or spiritual values of highest importance, and mere physical survival—though necessary—of least importance. While we can see the echoes of this formulation implemented in medieval asceticism and in the Mendicant Orders of the Middle Ages, our interest here is in the primary hierarchy of subsistence and social organization developed in Book I.

Despite the urbanization and commercialism of Athens and Corinth, Aristotle drew on the naturalistic tradition of a basically agrarian economy relying primarily on its own production for subsistence. He took money into account as a tool of efficient mediation in exchange as did Plato in the *Republic*. From this standpoint, money had a primary use value for trade, just as other goods that were useful in themselves were in the alternative useful for trading for consumption goods. This was the basis of Aristotle’s concept of a “natural limit” on the subjective desire for goods—they were of diminishing utility as consumption goods and therefore subject to the natural limits of realistic human needs. Money, properly used as an extension of the barter process, was also subject to this natural limit since it functioned in the exchange process as “commodities for money and money for commodities” (Lowry 1974, 1987, 1988). The hazard to the system was when outside traders, “metics,” undertook to

trade goods for money and carry off the money. These people were not participating in the closed circle of the natural economy and were interested in aggregating wealth in the form of money by charging high prices and carrying the monetary medium out of the community. Outside trade also permitted the acquisition of goods, unlimited by the natural utility of the local consumers. These goods could be acquired for resale abroad. Aristotle suggested that this process involved a reduction of the physical wealth of the country—a loss of potential surplus—which, by right, belonged to the offspring, the potential population growth of the community (*Politics*, Book I, 1258a35; see also 1320a-b). This point is not elaborated extensively, but it is reinforced by the logic of the analysis. The naturalistic illustration is even used of the commitment of an accumulated surplus to the young in the form of the yolk of an egg that supports the development of the embryo. In addition, the argument is supported by the historical context of the Greek economic tradition, in which the city-states were constantly struggling with population problems, perpetuating the practice of infanticide, and founding colonies with surplus citizenry. At the same time, their young men, exploiting their hoplite training, hired out as mercenaries throughout the eastern Mediterranean. The clarity with which this problem was understood is illustrated in Plutarch's *Lives* in his account of Lycurgus' economic program in ancient Sparta. An iron money, the obel, derived from the slender rods or spits used in cooking "suvlocki" or "shiskabob," was treated to destroy its commodity value as iron. This functionally sealed the economy against foreign goods or services that demanded an exportable money in payment. It also stimulated domestic trade and production and the export of commodities in exchange for commodities since outside money was of no value in Sparta (Lowry, 1987: 227–28).

While such references support the argument that fourth-century B.C. Greeks understood the concept of an economy as a potentially closed system, the important point is that they also were concerned about the possibility of a class or interest group being deprived of a *right* or natural claim through the vagaries of the economic process. In this context, we can comment on Aristotle's often cited denunciation of usury. As he put it, barter or exchange involving money as an intermediary was kept in line with the natural needs and limits on trade because it was consumption oriented. The lending of money with the stipulation that a greater amount of money be paid back was an abuse because it exploited a consumer need and because lenders were not subject to a natural limit on their desire for the benefits of the exchange. Although there are many discussions in Xenophon and Aristotle that indicate a consciousness of productive activities, in this formal systematic sketch, Aristotle focused on the citizen as an agrarian consumer trading surpluses for needs and potentially being exploited by usurers in times of privation. Within this framework of denunciation of usurers and outside traders, we can understand the special concern for the growing population's right to any potential surplus as the beginning of a principle of economic

rights—an entitlement—a claim on the surplus generated by the efficient interaction of the economy. This surplus should go to the support of the “offspring.”

This special concern for the young is, of course, implicit in any life-form that survives, since the offspring require gratuitous care to reach an age of self-sufficiency. Although the protection and rearing of children can be individually rationalized on the basis of personal altruism or as a means of guaranteeing support in one’s old age, when the prerogatives of children become recognized as a general social value to the community, then a subtle shift has taken place and a principle of social justice to the deprived or poor is nascent. This principle may well have a broader and older base as an established presumption in the extended family. The view that the family line transcends the claims of any individual generation reenforces the same concept that the future generation has a right or claim on the family or public patrimony. In Plutarch’s brief tract, “To an Uneducated Ruler,” the idea is reiterated that there is an obligation to recognize the rights of the coming generation and make provision for them (Plutarch, sec. 3).

ROMAN LAW: NATURAL NEEDS—MINORS AND ORPHANS

It is of some interest that in the *Institutes of Justinian*, prepared as a basic first text for law students in A.D. 533, the opening definition of natural law corresponds to Aristotle’s initial formulation of the basic economic process. The text begins: “Natural law is that which nature instills in all animals. For this law is not peculiar to humankind but is shared by all animals. . . . From it derives that association of man and woman that we call marriage; so also the procreation and rearing of issue” (Thomas 1975: 4 [*Institutes* I, 1]).

It was, however, the civil law or *ius civile*, of each state that provided the rules of conduct enforceable against the citizens of any given jurisdiction. The law of nations or *ius gentium*, provided the arrangements common to mankind, based upon “natural reason” (*Institutes* I, 2, 1) from which such arrangements as contract and sale were derived. For the Christian emperors, this *ius gentium* was presumed to reflect a divinely inspired “higher law.” “Natural laws which are followed by all nations alike, deriving from divine providence, remain always constant and immutable” (*Institutes* I, 2, 11). This distinction between civil law and the law of nations, sometimes characterized as natural law, follows Aristotle’s distinction in the *Nicomachean Ethics* V.7.1, and in the *Rhetoric* I.13.2. However, the Roman characterization of *ius gentium* is more aptly defined as those rules that human beings work out between themselves under the aegis of natural reason—a sort of universal common sense and practice. The initial concept of “laws of nature” is still focused on the basic physical needs and is not incorporated in the *ius gentium* or the *ius civile*. Within the context of the municipality or empire, the legal prerogatives of citizens were defined as deductions from their roles in the corporate state. There was, then, no real concept of a *right* against the state or against the ordered structure of society.

Nevertheless, the state did have a tradition of responsibility for the basic needs of the populace expressed in the Roman “dole,” which provided food for the destitute urban population. The perception of itself as a corporate entity made up of its citizenry, patrician and plebeian, led the Roman municipality to assume the obligation to import grain as tribute or by purchase and to supply its population through the market or by the dole. This tradition followed patterns found in fourth-century B.C. Athens and was perpetuated in Muslim municipal practice and in the medieval commercial towns as “provisions policies.”

With regard to children or minors, Roman law provided an exemption for them from the enforcement of contracts or sales. This was conceived as a protection against the possibility that they would be taken advantage of because of their youth and inexperience. The rule remains basically unchanged in modern English and American law in that such contracts made by minors are “voidable” at the behest of the minor but are otherwise enforceable. English law, however, with cases evolving from the late Middle Ages, was particularly concerned about “the necessities of life” and enforced contracts and sales dealing with the basic natural needs for survival. This special exception protected minors, living on their own, from being denied access to the necessities of life because of the reluctance of merchants or landlords to risk dealing with them.

The special concern for children took an additional peculiar turn in Roman life. By the second century A.D., both private and public practice evolved, making special provisions for orphans. This is characterized as a policy of *alimenta* (Hands 1968: 108).

Of more particular interest is the occurrence, during Hadrian’s reign, of the motto “*libertas restuta* accompanying distribution scenes on coins of his reign, almost identical with those of his predecessor, . . . [equating] freedom with ‘freedom from want’ ” (Hands 1968: 110). These coins were in the tradition of tokens issued to citizens with which to claim their allotments of grain in earlier times.

THE MIDDLE AGES: CHARITY AND NATURAL LAW

We are fortunate to have an extensive document dating from 1159, John of Salisbury’s *Policraticus*, as a reference base for appraising the transitions of the thirteenth century (Dickinson 1963). This extensive medieval treatise epitomized the sociopolitical thought up to that time replete with a heavy reliance on an organic metaphor. It was the culmination of the patristic tradition traceable through St. Augustine and back to Plato with its heavy emphasis on duty to authority while maintaining a sense of commonwealth and citizenship. The Roman law traditions were perpetuated, embedded in the canon law, and the notion of a *ius gentium* was continued as a Church principle derived from a “higher power.” Although Salisbury characterized the peasantry as the “feet” or underpinnings of the organic image of the society, this culmination of early medieval thought moved away from feudalism and provided a groundwork for

conceptions of kings and states and more centralized organization under the Church. As Dickinson pointed out in his preface, “The significance of the *Pol-icraticus* is that it contains the inchoate and incipient forms of so large a number of the political doctrines which were to identify themselves with greater clarity in later centuries” (Dickinson 1963: xi-xii). At the same time, this comprehensiveness of the *Policraticus* makes it an excellent threshold for appraising a significant transition that seems to have occurred in popular as well as philosophical thought. We refer to the apparent upsurge in private and municipal commitment to the well-being of the poor coinciding with the introduction of Aristotelian thought under the aegis, initially, of St. Thomas Aquinas.

Up to the Middle Ages, the members of the regular clergy had dedicated themselves to a relatively simple life, producing their own subsistence in their monasteries and focusing on spiritual and intellectual values. However, the Mendicant Orders seem to have drawn directly on Aristotle’s thesis of the ordinal sequence of priorities of needs for “goods of the body,” “external goods,” and “psychic goods” (philosophy and civic virtue). Aristotle had, of course *valued* these goods in the inverse order. What the Mendicant Orders did was compress the necessary precondition for attaining these higher values into the barest minimum standard of living (goods of the body), and they depended upon the surplus or largesse of the society for their provision. One can argue that the simile of “the lilies of the field” gave a New Testament endorsement of the bounty of nature to their practice, but they actively begged and drew from the society to support their psychic or spiritual objectives. During the same period, across Europe, there was a documentable innovation of privately and publicly financed charities-hospitals and alms houses as well as public distributions of food to the poor. This clearly registered change in public attitude was expressed by the building of scores of hospitals for the displaced, the lame, and the sick. It has been attributed to the increase in urbanization, the expansion of population up to the carrying capacity of the agricultural base, and severe periodic famines. There was a clear patristic tradition for personal alms giving. Generally unmentioned is the possibility of a Muslim theological influence—the personal obligation to give alms to the poor—which may well have spread across the Mediterranean or up the Iberian Peninsula along with preserved Greek literature, Arabic numbers for bookkeeping, and Muslim science.

The development of an extensive conspicuous structural poverty in the late twelfth and the thirteenth centuries, resulting from bare subsistence incomes for the employed workman, had its corollary in widespread pauperism among widows, orphans, the very young, the very old, the sick, the lame, and the demented. It may well be that this poverty was made *conspicuous* by the development of commercial towns in which the poor aggregated or were concentrated in more observable numbers. The laity of the newly developed towns took up the burden of support and management of this growing class that the church tended to accept as part of the order of things (Lis and Soly 1979: 20–25). From the late twelfth century on, direct personal philanthropy, organized confraternities, and

municipal councils presumed to be responsible for the plight of the poor. As an example of the aggressive assertiveness of such groups, in 1209 the residents of the small Flemish fishing village of Mardyck collected the tithes themselves that were due to the local monastery and distributed a third of them directly to the poor (Mollat 1986: 98). Not only were there many institutionalized distributions of bread or shoes to the poor, but in Germany and in parts of France institutions arose at the end of the twelfth century to permit paupers' claims for damages to be heard by citizen councils suggesting a basic sense of violated rights among the poor (Mollat 1986: 100). There was even a dissident theological current surfacing in the form of preachers and sects calling for higher status for the humble, illustrated by William Longbeard, Waldo, the Goliards, Durand of Huesca, the "White Capes," and the Humiliati (Mollat 1986: 102). The point is that there is ample evidence that the public recognition of poverty and pauperism had evolved into an institutionalized social commitment on the part of the laity and of public organizations, both private and municipal. The Church was no longer recognized as primarily responsible for this social issue.

The development of the famous *Beginages* in what is now Belgium is a case in point. This association of laywomen from the wealthy classes provided shelters for the rural poor. Furthermore, the duty v. rights issue was becoming unclear in the popular mind. The general state of conspicuous poverty in the towns had led to a formal cognizance of the large sector of the population that was chronically suffering from a shortage of the basic "goods of the body." Both the Roman municipal tradition and the Aristotelian tradition of natural prerogative were in place to support this borderline evolution of concern for the rights of the poor or, *au contraire*, the moral duty to the poor. Let us turn to Aquinas' rendition of the Aristotelian concept at this point.

Writing in the early thirteenth century from northern Italy where the most advanced and varied of charitable institutions had developed, St. Thomas Aquinas carefully combined the Roman law tradition of "natural right" with the canon law assimilation of it as "divine providence" and merged the Aristotelian tradition back into the mainstream of European thought. In his *Summa Theologica*, he clearly summarizes the philosopher's (Aristotle's) thesis on natural limit and need and cites *Politics* (*Summa Theologica* 22 [qu. 77, art. 4, concl.]). However, his generalization and application of this tradition to the conditions of his time read like a theoretical abstraction and endorsement of contemporary social thought. His position deserves quotation in full:

What pertains to human law can in no way detract from what pertains to natural law or to divine law. Now according to the natural order, instituted by divine providence, material goods are provided for the satisfaction of human needs. Therefore the division and appropriation of property, which proceeds from human law, must not hinder the satisfaction of man's necessity from such goods. Equally, whatever a man has in superabundance is owed, of natural right, to the poor for their sustenance. So Ambrosius says, and it is also to be found in the *Decretum Gratiani* (Dist. XLVII): "The bread which you

withhold belongs to the hungry; the clothing you shut away, to the naked; and the money you bury in the earth is the redemption and freedom of the penniless.” But because there are many in necessity, and they cannot all be helped from the same source, it is left to the initiative of individuals to make provision from their own wealth, for the assistance of those who are in need. If, however, there is such urgent and evident necessity that there is clearly an immediate need of necessary sustenance,—if, for example, a person is in immediate danger of physical privation, and there is no other way of satisfying his need,—then he may take what is necessary from another person’s goods, either openly or by stealth. Nor is this, strictly speaking, fraud or robbery. (Lowry 1988: 249 [*Sum. Theo.* 21, qu. 66, art. 7, concl.])

A systematic study of this issue in the commentaries and writings of other scholastic thinkers would be beyond the limits of this exploratory survey. It should be sufficient, however, to point out the obvious impact of such an unequivocal affirmation of the moral right of subsistence put forward by one of the giants of scholastic theology.

PROVISIONS POLICIES IN THE MEDIEVAL TOWNS

Pirenne generalizes the character of the medieval commercial town from northern Italy to the Low Countries, pointing out that their basic problem was a sustainable food supply. Even though their populations ran from only 20,000 to 50,000 inhabitants, by the thirteenth century an array of policies and regulations had arisen designed to stimulate effective markets. These included the traditional measures from publicity (the promotion of market information) to laws against forestalling and regrating (Pirenne 1936: 173–76). This high level of municipal intervention in the flow of basic food stuffs, even in normal times, was, of course, augmented during times of famine. In a sense, then, we can see a rational tradition of primary responsibility for subsistence institutionalized in the “towns.” The emerging commitment to the problems of pauperism may be seen as a natural corollary of this municipal tradition. We must also remember that the municipal organization was an extension of the Roman legal tradition and was influenced by the surviving commercial towns that had thrived on both the Muslim and Christian sides of the Mediterranean Basin during the so-called Dark Ages.

What must be kept in mind is that, with 80 to 90 percent of the population living on the land in peasant agriculture at little more than a subsistence level and with inefficient and expensive transport facilities, the provisioning of even small commercial towns required constant attention. These high percentages of the population on the land were an expression of the extremely low yields when compared to modern agriculture and the sensitivity of the flow of salable surplus to weather conditions. This meant that extensive networks had to be developed to provide for the necessities of life for the working poor, much less for the paupers of the larger towns. During the frequent famines, heroic efforts were

put forth by officials and loyal merchants trading over great distances. As Miskimin recounts, the Italian cities moved toward a pattern of control over their immediate hinterlands, making themselves monopsony buyers of foodstuffs with officials in charge of keeping track of population variations and food needs. They were provided with funds for purchasing outside food to make up anticipated shortfalls. Northern cities relied on market regulations. Generally the northern towns tried to stimulate market processes, but in the great famine of 1315–1317, a Pan-European grain deficiency brought home the tenuous and shallow food base for the towns. Ypres, for example, in the Low Countries, lost 10 percent of its population to famine (Miskimin 1975: 77–81). The high incidence of crop failures and famines is credited by Fernand Braudel with constant disruptions of nascent capitalist development until the revolution in agricultural production in the seventeenth and eighteenth centuries (Braudel 1982–1984).

The continued institutionalization of this problem is illustrated by the complex machinations in Toledo, Spain, at the end of the sixteenth century over famine and pauper relief (Martz 1983: 145–48). It is sufficient to recognize, for present discussion, that there is overwhelming documentation of an elaborate pattern of institutionalized commitments to a special responsibility for the subsistence needs of the masses of the population who were, incidentally, generally poor. Some of the more complex economic directions that this tradition took are of considerable theoretical interest.

THE *MONTES PIETATIS*: CREDIT FOR THE POOR

One of the most interesting developments in the concern for the well-being of the poor that arose in the Middle Ages was the commitment to provide low-cost credit. Along with the enhanced level of awareness of the problems of paupers in the thirteenth century emerged a concern for small loans for the working poor. Loans were generally available from Jewish money lenders and Lombards (Christian usurers) for the wealthy as well as heads of state. However, the Jewish pawnbroker seems to have emerged as a particularly desirable institution. In the fourteenth century, the authorities of Venice began negotiations with the Jewish community, as a condition of the establishment of their residency, that it should maintain pawnshops for the poor financed by a tax levied on the Jewish community itself (Calimani 1985: chap. 1). Other sources of credit for the poor evolved out of the “confraternities” or associations—nascent credit unions—and some hospitals or other charitable foundations undertook to give interest-free loans. Records from Cambridge, England, in the first half of the thirteenth century indicate regular dealings with Jewish money lenders. The local hospital establishment could, however, lend money against land as collateral. The hospital appeared to be a lender of last resort (Rubin 1987: 224). Documents indicate that such charitable institutions advanced small amounts to carry peasants to harvest time or to finance some emergency, frequently buying land rights rather than making loans.

There were other examples of foundations dedicated to interest-free loans to different classes: Notably, in 1361 the Bishop of London endowed a foundation with 1,000 silver marks to provide one-year interest-free loans. These loans were limited to 10, 20 or 50 marks, depending on the status of the borrower (Mollat 1986: 278). Mollat discusses several recorded instances in the same century in which projects for publicly supported credit for little or no interest were proposed or implemented on the continent. The recognition of credit to prevent a man, rich or poor, from losing his foothold in the economy in a crisis seems to have become widely accepted in the thirteenth century. Guilds and other associations in Europe provided similar support for their members. In the Low Countries, Lombards and an unidentified group called “Cahorsians” operated licensed pawnshops and “*tables de prêt*” (loan tables) in the commercial towns with official endorsement (de Roover 1948: 99ff.). Some foundations relied on the doctrine of “*lucrum cessans*” to avoid the problem of usury. Thus, an interest-free loan could be made against collateral, but the borrower would make a 10 percent gift to cover the “money lost” by the lender for foregoing his own use of the money in making the loan. Generally, it was clear that little attention was paid to the ban on usury, and there was a widespread concern for the availability of short-term credit in a world with capricious swings of fortune based on agricultural production and subject to military and political instability.

It was not until the mid-fifteenth century that the institution of the *Monte di Pietà* swept across Italy, Spain, and, a century later, the Low Countries. This public pawnshop tradition made the availability of low-interest or free credit a social obligation in support of the poor. It was often extended to the wealthier citizens as well when they were in difficult straits. Although there seems to have been a scattering of prototype public institutions in the Mediterranean commercial towns, the real impetus grew out of an intense campaign by Franciscan Friars of the Observant sect. Mollat’s explanation is most persuasive. According to him, a zealous campaign against Jewish usurers in the 1460s created so much consternation among the citizens and municipalities who recognized the important role played by the pawnshops that the Franciscans found themselves faced with a powerful “backlash” of hostile sentiment. They quickly adapted their evangelistic crusade to one of insisting upon the public provision of *Monti di Pietà*, public pawnshops to replace those operated by the Jews whom they strove to persecute. These institutions would lend money for a year at a 5 or 10 percent interest against double collateral. This program generated great popular support and, incidentally, curtailed the operations of some Jewish usurers. The myth that the Church opposed or suppressed lending at interest (usury strictly defined) is a casualty of this movement that was institutionalized in Italy and Spain in the late fifteenth and early sixteenth centuries (Pullan 1971: 450ff.). The institution spread into the Low Countries in the late sixteenth and early seventeenth centuries but was not accepted in France until the eighteenth century. Small communities, however, were still dependent on the Jewish pawnshops. In addition, many major cities continued to negotiate charters guaranteeing rights to Jewish

bankers and pawnbrokers to supply the major credit needs of active commercial centers (Calimani 1985: chap. 2).

Of particular interest to economists are the variations of the institution, the *Monti Frumentari* [Mountain (or Foundation) of Wheat] in southern Italy that advanced seed grain to peasants. These were clearly production-oriented credit organizations. In Castille, as early as 1431, the *Arcas de Limosnas* (Alms Chests) were established and expanded their activities to include those of the *Monti Frumentari* of Italy. Later, the *Positos de Trigo* began with a similar “commodity loan bank” (wheat) in Molina in 1478 (Mollat 1986: 279). This interest in public banking had only an echo in England where Gerard de Malynes expressed interest in the institution of “Mountains of Charity” and openly advocated that the English institute a state bank similar to the Banco di San Giorgio of Genoa. However, of more widespread importance was the popular policy that paralleled the *Monti di Pietà*. This was the extensive introduction of vellon, or “black money,” which provided circulating money for the majority of the population.

VELLON, LA MONETA NERA, MONETIZING POVERTY

One of the most intriguing and little-studied developments of the late Middle Ages was the ambivalent attitude toward copper money and the dual lines of theory to which it gave rise. Vellon was apparently a name given to silver money heavily debased with copper. At the same time, we find the extensive circulation of pure copper money (black money) that served the same purpose. This money contrasted with “white money” (silver) and “yellow money” (gold). There seems to have been a well-recognized need for large amounts of some coinage in small enough denominations to facilitate the increasingly active exchange economy that permitted the masses of the poor to benefit from division of labor and geographic specialization. At the same time, it was difficult for theoretical purists to cope with the circulation of a fiat coinage based on copper in a bi-metallic system based on silver and gold that traded at their international bullion values. Pedro de Valencia, writing in the first decade of the seventeenth century in Spain, severely criticized the king for doubling the value of the recently introduced copper coinage vis-à-vis its bullion exchange value with gold and silver. This practice enriched the crown, but also led to a massive importation of copper and counterfeit coins. Nevertheless, de Valencia grudgingly conceded that enough of this money should be left in circulation to serve the needs of the poor (Grice-Hutchinson 1986: 63). At the same time, Fernand Braudel pointed out that Portugal was being flooded with this debased copper money, being adjacent to the inflation in Spain. Small money was, however, so much in demand that 12 *reals* worth of small change in copper sold for 13 *reals*. This money spilled over into the Indies as fast as it could flow into the country (Braudel 1972: 542).

Italy seems to have been the home of black money where it circulated in the

Venician orbit. The operative distinction from money of account, however, seems to have been *moneta piccola* (billon or copper money and some small silver money used in local markets only) and *moneta grossa* (gold and silver coins of larger denomination used in international trade) (Lane and Mueller 1985: 11–12). The need for this small coinage to facilitate local trade in the commercially burgeoning north Italian cities of the fourteenth and fifteenth centuries is illustrated by Braudel's discussion of the complex specificity of trade at some ports. The saffron exports from Aquila in the Abruzzi required the import of linen bags and larger leather covers, and this valuable export was only traded for copper bars to supply the local mint that struck two kinds of copper coins (Braudel 1972: 376). The theoretical appreciation of this protofiat money is well documented (Cipolla 1956: chap. III). It is clearly indicated in a comment by Herrera: "It is by the base metal currency that one can best judge the fertility and abundance of a country for it is with this money that all the necessities of daily life are bought every day from the shopkeeper" (qtd. in Braudel 1972: 525).

There is a similar observation from a late sixteenth-century traveler in Italy, Fynes Moryson, that drew attention to the significance of this monetary system in augmenting the standard of living of the poor by promoting internal trade:

The Italians have small moneys of brasse, and for the least of them a man may buy bread, little papers of spice, or any such thing that is to be sold. These small moneys, the abundance of people in a narrow land, and the common peoples poverty, but most of all their innated pride, such as they had rather starve for want, then beg, these things make them doe any service for a stranger for a small reward, and make the passages of Rivers, or Channells (as at Venice), and all necessities, to be afforded for a small piece of money. Neither is it a small commoditie of these little brasse moneys, that it makes the meaner sort more ready to give almes. This benefit the English may well know by the want of like moneys, whereby the hire of Porters, all rewards and each almes being given in silver money, and the small pieces thereof being rare, all expences are much increased. (Moryson 1908, 4: 95–96)

GERARD DE MALYNES AND SEVENTEENTH-CENTURY ENGLAND

We can trace this line of concern and emphasis on the relation between petty trade and the well-being of the lower classes to England in the work of Gerard de Malynes. While much of his writing in the early seventeenth century approached carping about the treatment of English merchants in the exchange markets in the Low Countries, he nevertheless demonstrated a sophisticated understanding of monetary and exchange problems. He also demonstrated a strong concern for the lot of the common Englishman and the importance of basic subsistence goods, goods "of the belly and the back," and the importance of "putting men on work." He specifically lauded a landlord who kept an

unprofitable lead mine in operation because he was concerned for the welfare of the miners who would be otherwise unemployed (de Malynes 1622: 183).

In his elaborations on the consequences of the disadvantageous exchange rates given the English pound sterling against Flemish and Dutch money, de Malynes pointed out the consequences of a drain of bullion out of England since the silver value of the coinage was in excess of its exchange value against continental silver. This meant that sterling was being exported and reminted at a profit. De Malynes understood that, under a quantity theory of money, this process would only result in a smaller amount of money being in circulation in England—which should increase its buying power and, consequently, enhance its value to foreign buyers in the long run. However, he was apparently thoroughly aware of the importance of internal domestic trade from his mercantile contacts and observations in Spain and the Low Countries. Limited amounts of money would result in the increased purchasing power of the existing coinage and lower prices and would limit its function in promoting petty trade, so vital to the viability of the domestic economy. To confirm his commitment in this direction, his final enterprise as an active participant in commercial affairs in England was a project to manufacture farthings, one-quarter of a penny, for private circulation. The purpose was to produce large amounts of petty money in the tradition of vellon (*billon*) or black money in the Mediterranean (Muchmore 1969). The demand for small change had led to various measures, including leather money and other chits or tokens to provide “change” appropriate for small transactions.

What is even more interesting about de Malynes is that he drew on the basic Aristotelian formulation of a hierarchy of values to distinguish between barter as “the body of trade,” money as the “soul of trade,” and bills of exchange as the “spirit of trade” (de Malynes 1622). The interesting subtleties of this hierarchy go beyond the scope of this discussion. It is of interest to note that the basic association of the barter and petty-village economy with basic subsistence seems to have been kept alive by perpetuation of the Aristotelian analysis. De Malynes’ theoretical perceptions are part of this ongoing tradition of special concern for the subsistence level of the poor. It is reflected in John Locke’s assertion of the right of the poor to “share in nature’s feast” (Winfrey 1981). Smith developed a corollary of this analysis in his *Theory of Moral Sentiments*, to the effect that as a result of natural satiety the wealthy landlords have surpluses from their incomes which they invest in productive activity, thus advancing the public interest, “as if guided by an invisible hand . . . advance the interests of the society and afford means to the multiplication of the species” (Smith 1976: 219–20).

CONCLUSION

In retrospect, we have looked for the beginnings of a modern concept of social justice in the effort of Aristotle to define a naturally rationalized communitarian

economy. This contrasts with the previous concepts of authoritarian order tempered with some moral benevolence by an efficient and absolute ruler. Aristotle's reasoned naturalism not only supported the idea that the offspring had a claim on any available social surplus, but his rational naturalism also reached into Roman law. Rational naturalism was thus extended to a concept of public legal protection for the young and the deprived.

The somewhat desaltory evolution of various ideas on social justice suggests some patterns. There was a tradition of parental obligation to children, then community concern for the children, and, when grown, for the deprived. In Roman law, there were formal legal rights or legal obligations developed in favor of the young and, to some extent, the poor. In medieval times, there seems to have been a strong upsurge of a sense of individual moral duty to aid the poor while the emerging commercial towns expanded their commitment to a tradition of "entitlements" to "goods of the body," in Aristotelian terms. As commercial economies advanced and grew more complicated, individual almsgiving ceased to be adequate, be it ever so laudable. Institutions such as orphanages and hospitals were established to carry the burden of care.

With the emerging consciousness of the dynamic activity of the village and town economies of the Renaissance, concern for the interests and needs of the poor took on more subtle forms. Economic justice was linked to viable opportunity to participate in the benefits of vibrant and expanding economic activities. Spurred perhaps by the natural-rights tradition perpetuated in Roman law and the potential mischief implicit in restless urban mobs, both rulers and the privileged classes supported credit systems and advanced monetary policies that facilitated domestic economic activity. This long history of rationalized individual and institutional commitments can be correlated with a European tradition of social justice. It inverted the duty-rights orientation so that duty could flow from the rulers and the wealthy to the poor and deprived while rights could be rationalized and asserted by the dispossessed and unfortunate against the complacent and empowered. Braudel observes that "in the sixteenth century, after the true Renaissance, came the Renaissance of the poor, the humble, eager to write, to talk of themselves and of others" (Braudel 1972: 21). While Braudel considered this culmination of popular literacy a potentially misleading undercurrent when considering the forces that dominated the history of the period, we can appreciate the foundation to which this body of perverse literature contributed. The explosive political and economic philosophies of the seventeenth and eighteenth centuries that accompanied the growth of nation-states built on the traditions of legitimate demands and assertable rights to participation in the natural and rational processes of the economy, and, ultimately, the industrial revolution.

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3

The Origins of a Concept of Social Justice

HOWARD L. ADELSON

There is one example from the ancient world that contains the most complete paradigm of what is meant by social justice as distinct from righteousness or the call to upright living. In the Book of Nehemiah (Slotki 1951) the tale is told of how a protest arose among the poorer Jews who were dwelling in Jerusalem after the return from Babylon (Nehemiah 5.1–13; cf. Ackroyd 1970: 259).¹ The problem arose because of the social and economic privation to which the poorest elements of the population were subjected. Nehemiah, the royal governor of Judah, was angry that such a protest was even necessary, and he promptly consulted the more affluent members of the community (called in the text “the nobles and the rulers).” Nehemiah rebuked them for the injustice and inequality that was rampant in the land. He also called a “great assembly” of the multitude of the Jews. To them he repeated the complaint and exhorted them to cease oppressing the poor and to restore the lands and produce as well as a part of the money that had been usuriously exacted. To the probable amazement of Nehemiah, the rich promptly agreed to restore all that had been exacted from the poor in its entirety. Immediately Nehemiah summoned the priests and exacted an oath from the rich and powerful that they would fulfill what had been promised. Symbolically, Nehemiah then shook out his cloak from his lap and called for the punishment by God of those who failed to keep their oath. He said, “So God shake out every man from his house, and from his labor, that performeth not this promise, even thus be he shaken out and emptied.” The people promptly assented by calling out “Amen,” and they praised the Lord. Nehemiah also records that, in fact, they carried out their promise completely.

This story reveals the salient features of an act of social justice. In the first

place social justice is clearly a form of justice involving different classes of society and not between individuals. The doctrine of righteousness, as we shall see, regulated the relationship between individuals. In this case, it is also clear that the lower classes apparently had a recognized right of complaint (the Hebrew word is *tza'akah* for a complaint).² Clearly the lower classes did not have to seek permission to voice their complaint, nor did they have to resort to threats in the fashion that the plebeians of ancient Rome had to deal with the patricians during the early Republic when the Conflict of the Orders was taking place. It was apparently the natural right of these poor Jews to voice their complaint to the ruler—in this case Nehemiah, the governor. Their complaint, however, did not call upon the royal governor to give them justice; and, in fact, Nehemiah did not issue an edict satisfying the complaint of the poor. Instead, the upper classes voluntarily, and without any sanction, yielded justice and restored the possessions of the poor. The appeal of the poor had been made on the basis of the equality of those from different classes. They prefaced their complaint by saying, “Yet now our flesh is as the flesh of our brethren, our children as their children; and lo, we bring into bondage our sons and daughters to be servants, etc.” (Nehemiah 5.5).

The complaint is obviously addressed not merely to the royal governor but to the general assembly that particularly includes the oppressing class as well as the oppressed. The oppressing class, recognizing the equality of all and the socioeconomic injustice, promises restitution and justice for the oppressed. This is then confirmed by oaths and carried out completely.

This single incident differs from all others in the ancient and medieval worlds. While our knowledge about the reforms of Solon, Cleisthenes, Lycurgus, or the Conflict of the Orders in Rome, and the struggle of the Gracchi is extensive, there is not the slightest indication that the lower classes enjoyed a recognized right to demand social justice, and certainly, in almost all cases, the upper classes refused to concede voluntarily any rights to the oppressed. In the case of Lycurgus, as described in the *Life of Lycurgus* by Plutarch (Perris 1982), some 700 years or more later, it was only the Spartan upper class that had to be convinced to live in a society that granted equality among the Spartiates, and the Spartiates alone. Even during the social turmoil of the early Roman Republic, while the patricians were oppressing the plebeians and the plebeians were striving for social and political rights, there was no suggestion that the plebeians had a right to make demands, nor did the patricians yield spontaneously without a resort to threats by the lower classes. None of the descriptions by Herodotus, Thucydides, Aristotle, Polybius, Livy, or even Plutarch, to mention only a few of the ancient authors, yields the slightest indication that a concept of social justice existed. Similarly, it should be noted that in the Roman law, in the *Institutes* of Gaius as well as those of Justinian, there is not the slightest suggestion that social justice existed even as a purely jurisprudential concept.

There are *argumenta ex silentio* that should not be made by a historian. We can, however, demonstrate that there were other intellectual and conceptual

frameworks that existed in the ancient and medieval worlds that invalidated the possibility of a concept of social justice among the ancient and medieval people except in the world described by Nehemiah in the post-Exilic period.

If, for the moment, one goes back to the ancient Egyptian or Mesopotamian sources, the demand for individual righteousness, even in the absence of a divine sanction resting upon a systematic concept of reward and punishment, is clearly present. Similarly, the oldest parts of the Bible reveal a similar demand for individual righteousness. Very often this is connected with charity and kindness as in the case of widows and orphans, but sometimes it is the cause for a legal enactment. Such an incident occurs in the story of the daughters of Zelophahad who implored Moses for the right to an inheritance of land even though they were daughters and not sons. Moses solved this problem by consulting with the Deity, from whom he received the judgment to grant the demand of the daughters of Zelophahad (Numbers 27.1–5; Cohen 1956: 27).

The concept of social justice clearly involves the idea of a relationship between the various classes of society. Righteousness and uprightness, however, are private and individual virtues. It is the individual who is exhorted to be kind and generous, and there is no evident right of the oppressed to complain. In ancient Mesopotamia the practice of referring to “righteousness” and “uprightness” is analogous to the use of those terms among the ancient Hebrews in the Bible. It would seem as though the virtues of righteousness and uprightness were shared by both deities and humans, primarily rulers among the Mesopotamian peoples. Analogously, among the Hebrews the Lord is spoken of in precisely those terms of righteousness and uprightness. It would seem as though among the Mesopotamian peoples what is implied in these terms is acting in accordance with the law. Hammurabi, on his great stele on which his code was written, refers to himself in the last paragraph as the “King of Righteousness”¹³ (Pritchard 1955: 163–80, esp. 178; also see Driver and Miles 1952). The belief that a central function of kingship is the carrying out of justice, that is, fulfilling the law and enunciating the law, is a feature not merely of the earliest stages of monarchy but even of the monarchies of the Middle Ages. The idea of the king as a source of justice was very popular during the Middle Ages. Representations of this, as we know, exist in the medieval iconography of monarchy, and the giving of justice is one of the royal virtues throughout the Middle Ages. An excellent example exists in the Monte Cassino Gospels (A.D. 1022–1023) of the Emperor Henry II as a judge (Kantorowicz 1957: fig. 20).

In ancient Egypt the word *ma'at*, which is often simply translated as “righteousness,” obviously has a much broader meaning including “truth” and “justice.” It is obviously a cognate of the Semitic word “*emet*” meaning “truth.” It also seems as though it implies simply the correct order of the cosmos. In that sense it means “rightness” rather than “righteousness.” The most significant element in the concept of *ma'at* appears to be not doing evil rather than doing good. In the *Book of the Dead* the suppliant in the “Broad-Hall” of the “Two Justices,” an obvious relic from the period before the unification of

Egypt, proclaims that he has not done evil or anything wrong (Pritchard 1955: 34–36; also see Renouf and Naville 1904: chap. 125, 212–44). It is interesting that the concept or memory of the two lands of Egypt is preserved in the Hebrew name for Egypt, *Mizraim*, which, like *Sepharvaim*, the two Sipparas, is a dual construction meaning “the two Egypts.” That, of course, parallels the framework of the “Two Justices” and the fact that the pharaoh wore one crown for Upper Egypt and another crown for Lower Egypt.

Within Egypt there was obviously a call for righteousness and uprightness, but it did not involve a concept of social justice, meaning justice between different classes of society. Rather it was a call for individual uprightness and truthfulness. Obviously justice is the core concept, but it is justice for individuals even if one speaks of giving justice to widows. The royal official was expected to act as a court of equity and not to make distinctions in giving justice between the lowly and the powerful. Nowhere, however, is there a concept that all people are equal in moral terms and are entitled to social and economic rights to express that human equality. In other words, the Egyptian concept of uprightness and righteousness is highly individualized and is deeply intertwined with an attack upon judicial corruption and violation of the law.

One must not insist too much upon this connection with justice, but perhaps, as was stated above, the *locus classicus* of the Egyptian conception of morality and justice is the so-called “Declaration of Sinlessness,” often called the “Negative Confession” in the *Book of the Dead*. The setting is a court, and the moral value of the declaration is virtually nil because it is embedded in a magical spell. The ancient Egyptian believed that the essence of anything, *das Ding an sich* in Kantian terms, resided in its name. That is by no means a uniquely Egyptian belief because it can be traced in many cultures. It is still a belief that is found in certain parts of Western society. There is a reminiscence of this concept in the Bible, as seen in Genesis 2.20 (Cohen 1956), where Adam names all of the animals and birds. In the Egyptian example in the *Book of the Dead* the scene takes place in the Broad Hall of the Two Justices where the judgment of the dead by Osiris is taking place. At that point the dead Egyptian is instructed how to prepare for casting the spell that will force the forty-two gods to accept his declaration of innocence. In his preparation the dead Egyptian announces to the gods that he can make them accept his declaration because he knows their names. The knowledge of the name gives one power even over the gods (Pritchard 1955: 163–80).

In any event, the Declaration of Sinlessness and the entire *Book of the Dead* does not deal with the equality between the classes of society. It is the usual restatement of what is meant by righteousness. It merely treats the claims necessary for the Egyptian to be believed to be a righteous and upright individual. In that connection the constant refrain of Egyptian and Mesopotamian rulers and officials to having performed acts of charity, such as assisting widows and orphans, does not imply a conception of social justice.

Even with the rise of the classical culture of Greece and Rome, with its

emphasis during the Roman period on jurisprudence, there was a failure to create a coherent concept of social justice. The *Digest*, a book devoted to jurisprudence, begins with a discussion of what is *ius* or “right,” and what is *lex* or “law”⁴ (I.1.1 Krueger 1954: 29). In the Roman system of jurisprudence as set forth in the *Digest*, *justice* is described as the art of the good and the equitable, a definition originating from Celsus. In a slightly later passage, the word *justice* (*iustitia*) is defined as the perpetual will to give each his proper deserts (“*ius suum cuique tribuendi*”). It then says that the precepts of justice are to live honestly, to harm no one else, and to give each his proper due (I.1.10 Krueger 1954: 29).

The ancient Greeks, of course, discussed justice in philosophical terms, but they did not feel that law was necessarily a product of justice. For the Greeks justice was not a legal concept. Justice is probably the accurate translation of δικαιοσύνη, which, along with courage, self-control and wisdom, constituted those four cardinal virtues that were encompassed in the conception of moral goodness, ἀρετή (Barker 1951: 176). Since such goodness could exist both within the individual soul as well as within a community of individuals, it was a social as well as an individual virtue. It was, however, not an expression of law but of morality. In Plato’s *Republic* justice is part of goodness. In the case of the individual it is the relationship of the elements of the soul (reason, spirit, and appetite). In like fashion, the goodness of society may, for all practical purposes, be identified with the relationship of its various constituent elements. “The State which has τῶν καὶ κόσμος among its members through the faithful abiding of each in his station, and is thereby just, is also good” (Barker 1951: 153, n.2). Clearly the Platonic philosophical concept of justice involved acceptance of the inequalities that exist among the classes of mankind rather than the right of the oppressed to demand corrective action and the duty of the powerful to grant corrective action. Such a conception, as we shall see, involved belief in the equality of mankind that was not present in the classical world but which has its roots in the Hebrew Bible.⁵

Professor Irani has certainly emphasized the most crucial point about Aristotle’s conception of justice, which is that “justice requires that *equals be treated as equals and unequals as unequals*” (Irani 1981: 35–41 and esp. 37; cf. Evans 1981: 45–46, 52). The problem is how to give each his due, that is, his just deserts, and at the same time to treat all equally. The necessity of treating all equally, however, only arises if one believes that all men, or at least that segment of mankind to which the principle of social justice is to be applied, are, in fact, equal in some sense (Sabine 1954: 25–27, 54–55; also see Barker 1951: 139, n.2 and 256, n.1).

For philosophers, like Plato, lacking the concept of *ius* or that contained in the English word “right,” justice is not a legal concept. It is rather the harmonious union of individuals each contributing, according to his natural fitness and his training (Sabine 1954: 55). Greek preoccupation with moderation and balance in human relationships precluded the Greek from asking for social jus-

tice in which the individual and society would be asked to go far beyond the limits of moderation and balance. Social justice, as illustrated in the passage in Nehemiah, requires that certain classes of society give much more to other classes than that to which they are legally entitled. It is also not an act of charity or kindness, which might be satisfied by the giving of alms. Thus, social justice implies moral obligations that transcend the class structure and even the legal inequality of citizens.

While the ancient Greeks recognized a divine law, *θέμις* and a human law, *νομός*, there is never a suggestion even in the concept of *δίκη* or of *δικαιοσύνη*, which is normally translated as righteousness, of a demand for social justice in early Greek authors such as Hesiod⁶ (Sinclair 1932: 1–34 [LL. 1–302]). Every *psephisma* (i.e., decree) or the Athenian state, as we know from the epigraphical evidence, begins with the phrase, “Ἐδοξεν τῇ βουλῇ καὶ τῷ δήμῳ” meaning “It seems right to the Council and to the people (of Athens,)” but there is not the slightest moral implication in that preface. Greek law and practice did not envision anything remotely resembling social justice.

For the Roman, with a finer set of juridical ideas, there was a distinction that existed among the varieties of law such as the *ius civile*, the *ius gentium*, and the *ius naturale*. It is, however, with the *ius civile*, the law of the Roman people, that we are concerned and not with the presumed religious prescriptions and rights or other forms of law recognized by the Roman state. According to the two ancient textbooks of Roman law, the *Institutes* of Gaius and the *Institutes* of Justinian, laws are decrees of the Senate that have been confirmed by one of the assemblies of the Roman people. Therefore, we have the use of the expression *senatus populusque Romanorum* in the proclamation of such laws. The actions of the Senate alone were known simply as *senatus consulta*, and those of the *concilium plebis*, which were not confirmed by the Senate, were known as *plebiscita*. What is important is that the Romans recognized law as the product of human action. In the *Institutes* of Justinian we are told that the will of the *princeps* has the force of law because the people have voluntarily surrendered to him their power. That this was the fact is illustrated by the famous epigraphical text of the *Lex de Imperio* of Vespasian which was preserved in small part when Cola di Rienzi placed a bronze tablet containing the last part of that law in the Basilica of St. John Lateran⁷ (Dessau 1865; I, 67 [no. 244]; also see Newton 1901: 2–3).

While Roman history was replete with the struggle of the Orders in the early days of the Republic, the demands of the plebeians were never accepted immediately as justified by the patricians. The Romans of the early Republic did not accept the equality of man, and even the grants that were made to the plebeians simply confirmed their legal and political rights. It is clear that the Romans accepted the basic principle that all men were free by the *ius naturale*, but they accepted without a murmur the provisions of the *ius gentium* that permitted slavery. Roman literature reveals beyond any question that the prerequisites for a belief in social justice as we have described them on the basis

of the paradigm found in Nehemiah were not to be found in ancient Roman thought. The Romans did not arrive at a concept of social justice.

Men of the Middle Ages, with a fully developed hierarchical concept of society, were completely incapable of arriving at a concept of social justice. Much earlier than the justly famous *Capitulary of Kiersy* of the middle of the ninth century, the arrangement of society in a hierarchical system that was to make manorialism and feudalism completely comprehensible was well established in Western Europe. As James Westfall Thompson noted seventy years ago, the so-called tripartite division of society into workers, warriors, and priests was adumbrated in a letter of Pope Zacharius to Pepin le Bref and his prelates and nobles. Pope Zacharius only spoke of the warriors and priests, but he did describe their functions in the maintenance of society⁸ (Thompson 1923: 593, n.1).

The concept of law among the Germans in the early Middle Ages was one that rested upon the belief that the law was the *mos maiorum* and not the product of legislation. Thus, law might be discovered in response to social and political needs, but it was not the product of legislation as in the classical world. It was the customs of one's ancestors, as they were recalled by those who were supposed to know the law. Law was therefore not generated either by a living group of men or by God.⁹

While new ideas of representative government were developed during the course of the Middle Ages, those ideas did not lead to a concept of social justice. The concept of the *communitas regni*, the community of the realm, became a political reality in the later Middle Ages, but it had no influence upon the development of an idea of social justice. In a word, social justice was as foreign to the Middle Ages as it was to the classical world.

The roots of the concept of social justice as expounded in the paradigm of Nehemiah are to be found in the experience within Jewish culture and tradition that was the formative element for Nehemiah and his compatriots. There was a hiatus of some 2,500 years before the concept was resurrected in meaningful terms in the nineteenth century.

It is obvious that human suffering and social strife have been a product of civilization that can be traced back to the earliest days of history, but the last days of the Kingdom of Judah, the Babylonian sack of Jerusalem, and the turmoil of the restoration after the conquest of Cyrus the Persian yielded a particularly striking example of suffering and social strife. While the term *social justice* is obviously of very recent origin, probably from the early nineteenth century¹⁰ (Shields n.d.: 26ff.), the concept of a society based upon the equality of man and requiring humane treatment of the lower, poorer classes, as a right of those classes and as a duty of the more fortunate, appears to be a product of a particular set of circumstances during the ancient period. This conception of social justice as distinct from the mere call to individual, or even national, righteousness, or of an overwhelming belief in the harmony of the various classes, *homonoia* or *concordia*, which was celebrated as an ideal in the classical world of the Greeks and the Romans, is quite remarkable. It is distinct from the

use of the term *social justice* in the modern world. It is not surprising that many of the most violent and bigoted groups in the modern world have utilized the term *social justice* for their own nefarious purposes without the slightest degree of loyalty or commitment to the ideal that is supposedly enshrined within the term.

The principal writers on the subject of social justice in the modern world have been derived from the Catholic community. A simple perusal of the bulk of the literature reveals that fact. In some measure this is undoubtedly a result of the restrictive definition applied by Catholic authors to the concept of social justice and the vain attempt to find that it was among the concerns of medieval man—and, particularly, of St. Thomas. That has become a source of mental gymnastics because of the attempt to identify social justice with the legal justice described by St. Thomas¹¹ (Ferree 1948: 16–18, 63–77, 81–87, 149). It remains clear, however, that though St. Thomas has a great deal to say on the topic of legal justice and of the common good and general virtue, he was nevertheless a figure of the Middle Ages, and as such he believed in a well-ordered society in which there were contractual relationships established between the various orders of society. The ideal expounded in Nehemiah is simply not to be found in the works of St. Thomas or his philosophy.

There is, of course, a great temptation to identify social justice with social democracy and to insist that if one exists, then the other must also be present, even if only in an ancillary fashion. It can, however, be easily demonstrated that the equality of man is not a necessary axiom of social democracy. The conception of a world order by a supposedly social contract that binds ruler and subjects with specific obligations and duties does not imply social justice. That individual classes sought liberty in a quite restrictive sense and were determined to secure justice for themselves does not imply that they had a developed conception of a series of obligations to grant an equal privilege to others or to succour those who were less fortunate. Even at the end of the Middle Ages, when peasants chanted, “When Adam delved and Eve span, who was then the gentle man?” it is obvious that they were seeking the removal of onerous burdens that had been placed upon them over the centuries and not that they were proclaiming a crude egalitarianism. Medieval man believed in an ordered society with well-defined classes, each of which was to perform a task for the common good. There was, however, to be harmony among the classes. He believed that there could be unjust oppression of one class by another, but that is a far cry from the demand that the more fortunate must assist the less fortunate because it is both an obligation and right to ask for such assistance. As was pointed out above, the concept of *concordia ordinum* or *homonoia* did not require the correlative belief in social justice.

The evidence is quite clear, according to Professor Louis Finkelstein, that social strife was marked in Jerusalem and throughout Judah during the final years of the Davidic monarchy and after the return from the Babylonian Exile. Not only was there conflict between the upper-class urban society of Jerusalem

and the rustic peasant society of the countryside, but there was a struggle between the great landowners who could afford to take advantage of life in the city and the poorer peasants who experienced great difficulty in every phase of life (Finkelstein 1962, 1: 7–42, and *passim*). This conflict found expression in many ways and undoubtedly involved not only the urban poor and their neighbors—the nobles, priests, and great merchants—but also the provincial class of the *am ha-arets* and the upper classes of Jerusalem. There seems to be little doubt that the suffering of the poor was intense during the final days of the Kingdom of Judah before the Babylonian conquest and even during the siege of Jerusalem by Nebuchadnezzar. One incident from the period of the siege reflects the antagonism between the classes as well as the call for righteousness that had been the prophetic message for hundreds of years before the siege. While the siege was at its height, apparently the upper classes, determined to gain God's grace, liberated their bondsmen before the requisite six years had been fulfilled. Then, perhaps because Nebuchadnezzar for some reason withdrew for a little time or because the forces of the besieged enjoyed a momentary victory, they promptly reenslaved their compatriots¹² (Finkelstein 1962, 1: 304–5; see also Jeremiah 34.12–22; Friedman 1949). The Prophet Jeremiah fulminates against the wickedness of the princes and the injustice of their actions. He prophesies condign punishment because of their sinfulness.

Ezekiel, who prophesied in Babylonia during the Babylonian Exile, is quite clear in his anticipation of a period of restoration in which social justice and perfect equality will be evident and in which the wickedness that afflicted society will be condemned¹³ (Finkelstein 1962, 1: 332–33). What is most striking, however, about this prophecy of Ezekiel is his insistence upon the equality of all mankind (Ezekiel 18.25; Fisch 1950). One must not treat one individual as having greater intrinsic value than another. The poor are not to be considered merely the objects for righteousness and the recipients of charity. They have a right to real justice because of the innate equality of mankind. Since they are equal to all others, they should receive a decent living and kind treatment. This is carrying the prophetic message to a logical conclusion. Ezekiel, however, does not speak of human punishment or legal sanction for those who violate this moral imperative. Rather it is the Lord who will exact justice for those who pursue a wicked course.

The evidence of the intense suffering of the lower classes in the period immediately before the Babylonian siege and in the aftermath of the destruction of Jerusalem is overwhelming. The catastrophic nature of the destruction of Jerusalem and the disastrous ruin of much of the rest of the land as a result of the Babylonian invasion is just beginning to be understood¹⁴ (Ackroyd 1970: 6ff.; Wright 1960: 108–26). Assyrian and Babylonian armies had wreaked havoc in the western Fertile Crescent. The final siege of Jerusalem was certainly a catastrophe of overwhelming dimensions, and Professor Finkelstein is certainly correct in insisting upon its completeness and its influence upon the ideas that arose at the time.

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There seems little reason to question that the upper classes of the post-Exilic period dreamed of a restoration of all of their privileges and a return to the conditions before the catastrophe. The provincial rustics and the urban poor, however, found solace in a new religious conception that was established by a new class of pietists who were the forerunners of the Pharisees. The urban poor, drawn from the returning exiles, also provided supporters for this new doctrine of social justice¹⁵ (Finkelstein 1962, 2: 455, 460–61). Its universality is clearly seen in the prophecy of Deutero-Isaiah, which obviously refers to the period after the conquest of Babylon by Persia and the Jewish restoration¹⁶ (Isaiah chaps. 40–66). The expectation of a just world was the promise of the future. Israel is described by the Prophet as “a covenant of the people, a light for the gentiles” (Isaiah 42.6; Slotki 1957). He pictures the call to social justice in place of the sterile ritualism when he preaches,

Is not this the fast that I have chosen? To loose the bands of wickedness, to undo the heavy burdens, and to let the oppressed go free, and that ye break every yoke? Is it not to deal thy bread to the hungry, and that thou bring the poor that are cast out of thy house? When thou seest the naked that thou cover him; and that thou hide not thyself from thine own flesh? Then shall thy light break forth as the morning, and thine health shall spring forth speedily: and thy righteousness shall go before thee; the glory of the Lord shall be thy reward.¹⁷ (Isaiah 58.6–8)

It appears quite clearly that the paradigm of Nehemiah does not stand alone in solitary splendor. It is an incident demonstrating a monumental change in the ideas that were being promulgated in the period of the restoration under Ezra and Nehemiah. This concept of social justice went far beyond the call for individual righteousness that existed much earlier and that was directed at the conduct of individuals toward other individuals and not toward establishing the relationships of equals between classes of society. The development of ideas of human equality and the universality of doctrine combined with the suffering and social strife that accompanied events in the period surrounding the Babylonian Exile and the return made the creation of an ideal of social justice possible. This ideal, however, was to remain quiescent for two and a half millenia until the message was resurrected in modern form during the nineteenth century. In its new garb, however, it was often used by bigots. In addition, since our legal concept of rights only recognizes those rights that are enforceable, the idea of social justice was converted from a moral into a political and legal ideal in modern society.

NOTES

1. Ackroyd missed the entire significance of this passage, as did the other commentators.

2. The word has many uses in the Bible indicating a protest or a complaint. It was used as a legal term at a later period.

3. The Code of Hammurabi was translated by Theophile J. Meek.

4. The passage is derived from Ulpian. Cf. Micah 6.9: "It has been told thee what is good and what the Lord requireth of thee. Only to do justice and to love mercy and to walk humbly with God." Also see Carlyle n.d.; 1: 57–59. On the biblical sources for righteousness see Kennett, Adam, and Gwatkin 1910: passim. A much better discussion of the term in various cultural settings is to be found in Hastings, Selbie et al., 1908–1927; 10: s.v. righteousness.

5. Cf. Plutarch, *Lycurgus* 7 (Perris 1982, 1: 226–28) where he discusses the redistribution of land at the urging of Lycurgus. See, however, the revolt of the aristocracy as a result of the dissatisfaction with the reforms of Lycurgus (234). Plutarch attributes to Lycurgus the equality of all Spartiates economically, but he points to the differences based on merit. Cf. Barker 1951: 320–21.

6. See Sinclair 1932: 1–34. There is a fine translation by Lattimore 1959: 19–55.

7. The fragment of the *lex regia* of Vespasian is the only one that has survived from ancient Rome. The practice, however, is well attested, and it was revived in the early modern period in Europe. See Iustinianus, *Institutes*, 2, 6 (Krueger 1954: 29): "Sed et quod principi placuit legis habet vigorem, cum lege rege, quae de imperio eius lata est, populus ei et in eum omne suum imperium et potestatem concessit."

8. *Codex Carolinus*, No. 3 (*MGH Epistolae karolini aevi*, I, 480): "Principes et seculares homines atque bellatores convenit curam habere et sollicitudinem contra inimicorum astutiam et provinciae defensionem, praesulibus vero sacerdotibus adque Dei servis pertinet salutaribus consiliis et oracionibus vacare, ut, nobis orantibus et illis bellantibus, Deo presstante, provincia salva persistat, fiatque vobis in salutem laudem et mercedem perpetuam." This passage was cited by Thompson.

9. Side by side with the secular law, of course, there was the canon law, or religious law. The Church, however, did not merely accept the hierarchical organization of society but strongly taught that doctrine. The Church preached individual salvation through faith and righteousness or uprightness. Piety and righteousness, however, are not the sources of the doctrine of social justice. Pleas for the care of the poor are couched by the Church in terms of charity and not social justice. In the period of the Gospels and of the early Church, one can trace the development of doctrines about the equality of mankind and the universality of doctrine. For example, Mark 7.25–30 has Jesus say to the Syro-Phoenician woman with regard to spreading his doctrine to the Gentiles: "Let the children first be filled: for it is not meet to take the children's bread and to cast it unto the dogs." See, however, the later passage in John 4.6–47, where Jesus, in speaking to the Samaritan woman, is obviously taking a universalistic approach. John is, of course, replete with anti-Jewish passages that can hardly be seen as proof for the equality of all mankind. Cf. John 8.31–59. It is much clearer in the preachings of St. Paul and in a statement by St. Peter at the Council of Jerusalem. See Acts 15.1–11; 20, 21; Romans 2.10–29; 11.1–36; I Corinthians 1.22–25; 9.19–23. St. Paul has some things to say about the subjection of women that infuriates modern feminists who pay less attention to the passages in which he preaches human equality. One should take note of the fact that the newspaper published by Father Coughlin, an extreme bigot in the thirties, was called *Social Justice*. Clearly, it is not an act of social justice within the paradigm set forth by Nehemiah when modern states exact taxes from one or more classes of society to utilize

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that wealth for the benefit of a lower class. The individuals paying the taxes are doing so under compulsion.

10. Cf. Ferree 1948: 83–84. He follows the opinion of most in dating the first use of the term to 1845 when it was used by Tapperelli. Shields takes the same position. Also see *Catholic Encyclopedia*, 8: 572, s.v. justice (by T. Slater) for a distinction between individual righteousness and social good works on the issue of social justice. Cf. McCarthy 1990: 60–69, 249–54, and 302–8, for an indecisive attempt to find these moral values in the writing of Marx. On the issue of whether or not Marx had a vision of social justice, McCarthy's effort reminds one of Abelard's *Sic et Non*, and it is equally unsatisfying in simply leaving the conclusion to the reader. It cannot, however be ignored that Marx preached a classless society, and as a result his work would not fit the paradigm of Nehemiah. The very idea of dialectical materialism argues against any belief in social justice in the terms of the paradigm from Nehemiah.

11. Ferree also discusses the relation between the ideas of Aristotle and those of St. Thomas on the issue of justice. It is interesting to record that the meaning of the term was stretched far enough to permit Pope Pius X in the twentieth century to extol St. Gregory the Great as a "public champion of social justice" because he resisted the unjust pretensions of the Byzantine emperors. See [Iucundum Sane] in *Actae Sanctae Sedis* 36 (1904): 514–15: "Vere Dei consul factus [inscr. sepulcr.] actuosae voluntatis fecunditatem ultra Urbis moenia porrexit, totamque in bonum consortii civilis impendit. Byzantinorum imperatorum iniustus postulationibus restitit fortiter exarcharum et imperialium administrorum fregit audaciam, sordidamque avaritiam coercuit, publicus iustitiae socialis adsertor."

12. Jeremiah is the source for the story (Jeremiah 34.12–22). Cf. Micah 2.1–3 in Cohen 1957, for a somewhat earlier attack upon social injustice. Ezekiel 34.1–19 also appears to be a plea for social justice.

13. Ezekiel 3.17ff., is a simple call to righteousness. Ezekiel often preaches about the need for reformation. Ezekiel 34.1–19, however, is certainly a vision of social justice in which all are equal.

14. Recent excavations in the City of David confirm the completeness of the destruction and the probable suffering of the inhabitants during and after the Babylonian Exile.

15. Surprisingly, Finkelstein does not cite the example of social justice described in Nehemiah.

16. Universality and equality are the themes of this restoration, which is to be greater than all that preceded it. The attack upon idolatry is couched in terms of a past human failing. The comfort of the future lies in the achievement of a new perfection. Also see Finkelstein 1962, 2, 490ff.

17. Cf. Zechariah 8.16–17 in Cohen 1957, where doctrines that adumbrate the idea of social justice are adumbrated before the destruction of Jerusalem.

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Part II

Articulation of the Idea of Social Justice in the Ancient World

***KHRĒMATA*: Acquisition and Possession in Archaic Greece**

THOMAS J. FIGUEIRA

My purpose in this chapter is to explore archaic attitudes toward affluence and poverty and toward upward and downward social mobility, using a semantic approach in which the evidence for the deployment of a characteristic terminology will be evaluated. First, it is necessary to delimit the subject chronologically and from the standpoint of the socioeconomic orientation of the sources. By archaic Greece, I denote the period beginning between ca. 750 B.C., when most Greeks began to live in *poleis* or city-states, and ending in 480–479 B.C., when the invasion of Greece by the Persians was repelled. Therefore, my primary focus will not fall on hexametric poetry, which, either necessarily or conventionally, describes a Dark Age, pre-*polis* society. We may need to have Homer and (especially) Hesiod in the back of our minds in understanding our sources, but my preoccupation here will be with those poetic traditions that are pervaded by a consciousness of the form of the *polis* and of its systemization of articulated relations between social groups.

It is also essential to emphasize that the ethos of subsistence farmers is not a central concern here. Low-grade, autarkic cultivation supported the vast majority throughout the period, dominating many economies. Yet, its characteristic semantics, at least as may be discerned from Hesiod's *Works and Days*, do not differentiate individuals and groups analogously to the terminological systems exhibited below. Instead, we must grapple with one of the most prominent and stark of the archaic polarities, wealth and poverty. The actual distribution of assets and incomes in many *poleis* may have approximated a continuum, with both the level of discontinuity and the placement of sharper gradations differing from city to city. The wealth and poverty occupying our attention were marks

of critical distinction, not simply the ends of a continuum. This wealth stood as a major, conspicuous focus for social attention, carrying with it a claim to political leadership.

I have searched archaic poetry for the appearances of terms associated with several clustered concepts. The poets who have been surveyed are listed under *Abbreviations* (see the Table of Abbreviations, p. 59). The editions after which they are cited may be found in the *Thesaurus Linguae Graecae: Canon of Greek Authors and Works*² (Oxford, 1986). Semantic categories are listed under *Vocabulary*, in which relevant terms appear in transliteration with English translations.

My point of departure was the body of poetry transmitted to us under the name of Theognis. The Theognidea, as the corpus is also called, were composed in elegiac couplets of hexameters and pentameters. Archaic elegy contained instructive and admonitory statements, often with a gnomic character. This aphoristic quality encouraged later abbreviation of the poems into epigrammatic shapes. In some communities, elegiac poetry was a primary vehicle for the transmission of elite values between generations. As can be seen from the "Table of Attestations," Theognis contains the most elaborate extant repertoire of archaic statements on the material conditions of human existence. Not only does the nature of elegy offer clues toward understanding why this is so, but the history of the Theognidea indicates how it became an unusually influential exposition of views on economic status. Theognis was the poetic *persona* assumed by a number of Megarian poets active from the late seventh or early sixth century down to the early 470s. An initial context for the circulation of the poetry was the elite at Megara, a city lying directly west of Attica, and its colonies in Sicily, the Sea of Marmara, and the Black Sea. The vividness and polemical thrust exhibited in these poems is owed considerably to the sharp ideological division between Megarian aristocrats and *dēmos* 'common people'. Theognidian elegy, as the generic vehicle for the dissemination of an elite, exclusivist ideology, was opposed by early Megarian comedy, encapsulating a populist *ethos*.

Theognidean poetry was particularly favored by late fifth- and early fourth-century Athenian opponents of imperial democracy. Their adoption of Megarian aristocratic poetry had perhaps the effect of selecting for preservation poems most evocative of tensions between groups. With changes in relative economic standing so obviously a source of friction during the Peloponnesian War, the surviving poems of Theognis may have been chosen to help dramatize Athenian ideological conflict. This very process of filtering makes the Theognidea valuable as evidence of archaic ideas on the acquisition and possession of property: that is, archaic ideas as received by late fifth- and early fourth-century Greeks. Yet, a cautious reading is also warranted: We not only have the "economics" of an aristocracy in confrontation and retrenchment, but also those attitudes as received by elite Athenians anxious about redistribution of wealth to other classes.

The Theognidea establish the framework that is presented in the “Table of Attestations,” within which one can assimilate other poets of elegiacs or iambic meters, such as Solon. Their poetry reveals congruences with the normative system revealed in Theognis, although the actual number of citations is much more modest. In the table, these attestations are headed by the “at-sign” symbol (@). Another body of poetry with analogies to the same system of reference is lyric symposial poetry, exemplified by *skolia* ‘drinking songs’, because it shared a context with elegiac poetry in social occasions like symposia. These attestations are introduced with the word *also* in the table.

In juxtaposition to Theognis, I have placed lyric poetry and, in particular, the epinician choral poetry celebrating the victories of aristocratic athletes in the panhellenic games. These citations are introduced by a “tilde” (~) in the table. This decision is not immune from chronological criticism—Pindar is a near contemporary of Aeschylus. I should emphasize, however, that fifth-century choral lyric plays an analogous role in oligarchic polities and in their more stratified societies to that performed by drama in democratic Athens, where a greater interpermeability of groups existed. Hence, Pindar and Bacchylides stand in a more direct line of succession from archaic thought than do the fifth-century literary figures of imperial, democratic Athens. Indeed, at least insofar as their attitudes toward wealth and property are typical, the gnomic comments of late archaic and early classical lyric often extend a tradition of elite moralizing previously crystallized in archaic elegy. There are, however, some important differences in perspective, in terms both of genre and of conceptual progression.

WEALTH

Let us start with the nature of wealth itself. Here it is striking that we do not find extensive catalogues of its constituent elements. To be sure, we do find the passages noted under **IA.1**, where material possessions are listed along with other goods. Yet, it must be recognized that such collocations are subtly subversive of the idea that wealth is valuable in isolation from other goods, as they combine material possessions with moral qualities and other attainments. There turns out to be little difference between these lists, where the material goods are treated more or less positively, and those passages collected in **IA.2**. Here material goods are rejected for superior possessions such as *aretē* ‘virtue’ or ‘excellence’, health, good judgment, and courage. The latter passages vouch for the superiority of nonmaterial possessions, while the former speak to their value only when possessed along with nonmaterial goods.

Verses 1253–54 of Theognis describe an *olbios* ‘prosperous’ man and are almost identical to Solon fr. 23: “*Olbios* is he to whom there are dear boys and whole-hooved horses | and hunting dogs and foreign guest-friends.” Fragment 7 of the *Carmina Convivialia* offers: “It is best for a mortal man to have health; | second, to be beautiful in his appearance; | third, to be rich (*ploutein*) un-deceitfully; | and fourth, to be young among friends.”

The rejection of wealth in preference to other goods is a more common sentiment. Archilochus puts a rejection of the goods of *polukhrusos* ‘with much gold’ Gyges of Lydia into the mouth of Kharon the carpenter (fr. 19). The same opinion appears in a poem in the *Greek Anthology*, attributed to Anacreon (AG 11. 47). The Theognidea contain a series of passages rejecting wealth in favor of nonmaterial attainments, e.g., vs. 315–18: “Many bad men are indeed rich and good men poor; | but we will not exchange with them | our *aretē* ‘excellence’ for their wealth, since the former always endures, | while different men have *khrēmata* ‘property’ at different times.” In a similar lyric reminiscence of the fifth century, Aripbron rejects wealth, children, and sexual gratification for health (fr. 1). Particularly noteworthy is a passage of Theognis (719–28; nearly equivalent to Solon fr. 24), that details material tokens of prosperity, only to reject them in favor of a minimalist lifestyle that supports an enjoyment of sexual intimacy. Strikingly, it is the inevitability of physical decay and death, for which riches avail one not, that is the justifying factor: “Equally wealthy (verb: *plouteō*) indeed is the one to whom there is much silver | and gold and fields with wheat-bearing soil | and horses and mules, and the one to whom there is what is needed | for his stomach, sides, and feet in order to enjoy sensuously | a boy or a woman, and whenever the due season of these things | arrives, fitting youth is also present. | These things are wealth for mortals. Accordingly, no man goes | to Hades in possession of all these superfluous *khrēmata*, | nor would he, giving ransom, escape death or grievous | diseases or the approaching evil of old age.” Yet, it should be appreciated that the constituent items of wealth are never rejected in favor of their absence or poverty, but always for nonmaterial goods.

As for the provenience of wealth, many passages say the same thing: The gods grant wealth to men. Note lines 165–66 of Theognis: “No one of men is either *olbios* ‘prosperous’ or *penikhros* ‘poor’ | or good or bad without god.” Solon refers in fr. 13.9 to the “wealth which gods grant.” In Theognis 319–22, we find the conditional clause, “if god grants life and *ploutos* ‘wealth’ to an evil man” (v. 321; cf. fr. 5). A long poem of Theognis addresses Zeus, portrayed as all powerful and knowing of the human heart, reproachfully because of the prosperity of the base and the desperate plight of the just (373–92).

Testimony on the divine origin of wealth from Bacchylides and Pindar shows the vitality of this theme within aristocratic consciousness. Bacchylides in his fifth epinician ode observes (vs. 50–55): “*Olbios* ‘fortunate’ is he to whom a god | has granted both a share of fair things | and with an enviable fortune | to conduct an *aphneos* ‘wealthy’ lifestyle; | for no one on earth | is fortunate in all things.” Pindar often reflects on the god-given nature of human success, transcending material good fortune to encompass athletic victory and social prominence. The program of the *epinicia* is served in two senses: First, the victor and his family are oriented toward moderation, and, second, envy is avoided in a counterbalancing of the act of assertion inherent in the commission and per-

formance of the victory ode. An example from *Nemean* 9 illustrates (45–47): “Let him understand that he is winning marvelous *olbos* ‘prosperity’ at the hands of the gods; | for, if he acquires conspicuous glory along with many *kteana* ‘possessions’, | it is not possible for a mortal to touch with his feet still farther upon another peak.”

Naturally, as a gift of the gods, wealth can be properly a subject for prayer (note **I.B.1a**). The attention toward material well-being is again sometimes balanced by a concern for the achievement of other goods, as in *Theog.* 885–86: “May peace and *ploutos* ‘wealth’ hold the city, in order that | with others I may revel: I am not enamored of evil war.” In iambic verses, Hipponax requests of Hermes sixty gold staters among other goods (fr. 32), and, in another fragment (38), seems to ask Zeus why he has not received gold and silver. Since the honorands of Pindaric poetry are necessarily wealthy, such prayers in the odes take the form of requests that the passage of time not impair the prosperity of the poet’s patrons. There is, however, another type of meditation, striking a fatalistic note about man’s station; *Pythian* 3.104–110: “. . . at different time, there are different breaths | of high flying winds. The *olbos* ‘prosperity’ of men does not remain for long | safe, whenever falling heavily it follows. | Small in small circumstances, great in great, | will I be, and I shall always honor my attending fortune | with my wits, serving with any device at my disposal. | If god would offer me delightful *ploutos* ‘wealth’, | I have hope to find later lofty fame.” Given the Greek propensity for deifying abstractions, it is unsurprising that *Ploutos* ‘Wealth’ himself could be envisaged as a divinity. This god could be invoked in a rebuking tone like *Theognis*’ long complaint to Zeus (373–92). Compare *Theognis* 523–26: “Not in vain do mortals honor you so much, O *Ploutos* ‘Wealth’, | since you indeed tolerate baseness easily. | It is fitting that good men men have *ploutos*, and | *peniē* ‘poverty’ be a misfortune for a bad man to bear.”

The popularity of a belief in god-given wealth suggests that it served as a psychological mooring spot for archaic aristocracies buffeted by changing economic conditions. The relative insignificance of the related idea that wealth is a product of impersonal fate substantiates this point. Prosperity resulting from chance was less acceptable than from divine decree, however variable that was perceived to be. In fact, Fate as introduced in the Pindaric passages in **I.B.1c** seems to be another deified abstraction or, at least, to be envisioned as an agent of divine volition.

Two contradictory ideas seem to flow from the theologically determined origin of individual wealth. One notion is that such wealth ought to be durable, since grounded in something more permanent than fragile, transitory human existence. Solon in fr. 13.9–10 states that: “the *ploutos* ‘wealth’ which gods give, remains for a man | steadfast from the lowest bottom to the summit.” *Theognis* 197–98 observes: “*khrēma* ‘useful property’ which is from Zeus and in a man’s possession justly and | purely, always remains durable.” Pindar *Nem.* 8.17–18 has “*olbos* ‘prosperity’ planted with god’s help is more lasting.”

Where movement up and down the hierarchy of economic status was becoming more common, we also find a second notion much more commonly voiced, namely, that the material condition is highly variable. In elegy, that variability can be specifically traced to divine disposition. Theognis 155–58 advises: “Being angry with a man, never reproach him | with soul-devouring *peniē* ‘poverty’ and destructive *akhrēmosunē* ‘need’, | for Zeus balances the scale variously at different times, | at one time to *ploutein* ‘be rich’, at another to have nothing.” More commonly, however, invoking the changeability of material fortunes serves to distance affluence from the entire system of appraising individual worth. Wealth springs from an ever-changing cycle of vicissitudes. The predicament is vividly put by Theognis 557–60: “Be alert: truly danger stands on a razor’s edge. | At one time you will have much, at another rather few goods, | so that neither will (or: ought) you be exceedingly *aphneos* ‘rich’ in *kteata* ‘possessions’ | nor will you go into great *akhrēmosunē* ‘need’.” In contrast, riches in the possession of base men are assumed to derive from mere variability and not from divine dispensation. Accordingly, they are bound to be lost catastrophically (e.g., Theog. 197–208).

Changing material fortune is treated differently in epinician lyric, and understandably so. Epinician poets commemorated the victories of their patrons. These wealthy individuals were preoccupied with the maintenance of their present prosperity and status that the choral performance in their honor symbolized. Impermanence is muted, being invoked best in gnomic reflections like fragments 24 and 54 of Bacchylides or *Pythian* 3.104–11 or 8.73–78. Regarding the fortunes of honorands, the mutability of prosperity appears only obliquely in the prayers noted above that their affluence abide. Elegiac poets, however, more often dramatized situations where persons who once claimed elite status by heredity were now impoverished. Among lyric genres, *thrēnoi* ‘dirges’, illustrated by the fragments of Simonides cited in **I.B.3**, emphasize the fragility of wealth. They stand between elegy and epinician poetry, pointing up the generic boundaries. Observe fr. 16: “Being a man you may never say what happens <tomorrow>, | nor, seeing an *olbios* ‘prosperous’ man, how long he will be so; | for not so swift is even a long winged fly’s | movement.”

A similar dichotomy exists on the valuation of prosperity in elegy and epinician choral lyric. In epinicia, the praise of prosperity takes several characteristic forms. Wealthy individuals, civic prosperity, or possession of valuable objects are standard subjects of praise. They act as tokens of the favored status of the honorands. Such references perform the necessary political function of directing public attention toward individuals whose participation in the economic elite established a presumptive claim to political leadership. Very often, praises of material prosperity are linked to the possession of various virtues. Elite status for the honorands of epinician poetry was a package deal. For example, I could find only one reference to envy that might be directed mainly toward wealth, but, in *Pythian* 11.29–30, Pindar might still be using *olbos* ‘prosperity’ in a more general sense.

Contrast the elegiac treatment in **I.C.1** of the honor paid to wealth. Theognis speaks of the preeminent standing of wealth, but his treatment is rather like that of the catalogues of goods reviewed earlier. The prestige of riches is a situation to be conceded only with regret. In verses 699–718, a particularly long, mythologically grounded exploration of the dominance of riches over moral and intellectual faculties concludes with the observation that “*ploutos* ‘wealth’ has the most power of all.” Verses 619–22 note that “everyone honors the *plousios* ‘rich’ man, but condemns the *penikhros* ‘poor man’, and the mind within all men is the same.”

AFFLUENCE AND MORAL CHARACTER

Archaic elegy sought to account for social change and, in particular, for the upward and downward mobility altering the composition of the elite. Hence, the identity of those affluent is one of its central preoccupations, along with issues such as the difficulty of transmitting values across generations and the fragility of social cohesion in the face of treachery. As the passages under **II.A** (and the aforesaid enumerations of life’s goods) indicate, wealth ought to be held by those with *aretē*, justice, and wisdom. Elegy advises this in admonitions such as Theognis 523–26 (reproduced above) or in 753–56: “Having learnt these things, dear companion, gain *khreēmata* justly, | having a temperate spirit apart from wantonness, | while always mindful of these words. In the end | you will approve, being persuaded by temperate discourse.” Compare Solon fr. 13.7–8: “I desire to have *khreēmata* ‘property’, but I do not wish to acquire it unjustly.”

Pindar provides parallels in praising honorands who combine wealth and virtue (note the starred entries in the table). Consider *Olympian* 2.53–56: “*Ploutos* ‘wealth’ adorned with virtues brings the proper | time for these things (i.e., victories), sustaining a profound, keen involvement; | (it is) a conspicuous star, genuine | light for man . . .”: or *Ol.* 5.23–24: “. . . if someone tends an *olbos* ‘prosperity’ that is sound, being generous with his *kteata* ‘possessions’ and adding in fair fame, | let him not seek to become a god.” The chastening accent that is sometimes present concerns the danger of forgetting one’s mortal limits in a moment of exultation, as we have just seen in *Ol.* 5.23–24 (cf. [e.g.] *Nem.* 11.11–16; *Is.* 5.11–15). In both elegy and the gnomic reminiscences of epinicia, the propriety of the joint possession of wealth and *aretē* was occasionally transmuted into a rejection of riches in favor of moral attainments, although the belief that the just and good deserve to be prosperous is the more dominant idea.

Naturally, Pindar and Bacchylides, whose epinician poetry is absorbed with praising the athletic victor, his family, and city, cannot give us the other element of the equation. Elegiac poets provide the correction, as we can perceive in **II.B**: Deserving individuals have poverty instead of riches. Some of these passages have already been cited above, like Theognis 373–92. In addition, note verses 383–85 of the Theognidea: “. . . those from base | deeds are restraining their

hearts, nonetheless I have *peniē* ‘poverty’ the mother of resourcelessness, although they cherish just things.”

The necessary analogue is presented in **II.C**, that is, that base, foolish, or socially useless individuals can become wealthy. The two ideas are often juxtaposed. Solon fr. 15 states that “many bad men are rich, many good men *penontai* ‘are poor’”; Theognis 149 has “god gives *khreēmata* ‘property’ even to a very bad man.” Verses 731–52 close with the observation that: “whenever an unjust and wanton man, avoiding the anger neither of any man I nor of any of the gods, I is hybriatic, sated by *ploutos* ‘wealth’, while the just I are wasted, being worn by dreadful *peniē* ‘poverty’.” The same formula appears in 683–84: “many mindless people have *ploutos* ‘wealth’, but others seek fair things (*kala*) worn by grievous *peniē* ‘poverty’.” Lines 1059–62 attach the motif to the Theognidean preoccupation with testing human character: “for some have badness, hiding it by *ploutos*, while others have *aretē*, hiding it by destructive *peniē* ‘poverty’.” Some passages lack explicit parallels, though the link is implicit in their combining the riches of the base/foolish with the superiority of virtue (e.g., 149–50; 465–66).

Theognis 865–66 offers “god gives fair *olbos* ‘prosperity’ to useless men.” Solon gives a political shading in fr. 6.3–4: “for satiety breeds *hybris*, whenever much *olbos* ‘prosperity’ attends men, for whom the mind is not straight.” In this category, where the status of the epinician honorands is not threatened, Bacchylides can make gnomic pronouncements akin to those of Theognis: 1.160–63: “*ploutos* keeps company even with base men. It is eager to inflate a man’s ideas”; 10.49–51: “I also know the great power of *ploutos* which makes a useless man useful.” The line between good (*agathoi/esthloi*) and bad (*kakoi/deiloi*) is usually drawn quite sharply. In one passage, however, the *kakos* is explicitly imagined as becoming an *esthlos* with the help of the god *Ploutos* (1115–22).

In the moral context of the elegiac poet, we can determine the identity of these *kakoi* ‘bad’ or *deiloi* ‘base’ men, whose acquisition of wealth is so objectionable. They are not primarily the miscreant peers of a well-born poet, but rather persons of lower status who have infiltrated the elite. Theognis treats such interlopers as wild men who have entered the *polis* and the ranks of the good (53–60), comparing them elsewhere to ship’s passengers who have overthrown the helmsman (667–82). Since, in the main, elegy takes a passive posture toward the improvement of one’s economic standing, the Theognidea can envisage no means for the incorporation of upwardly mobile people in an hereditary elite. Even Solon, who opened up Athenian officeholding by his census system, does not advocate such adjustments, at least not in his *elegiac* poetry.

Ill-gotten wealth would seem impossible, if affluence is god given, but the vicissitudinous character of status is to be considered. Thus the moral loading of any specific level of affluence is dependent upon the inherited rank of its holder. Hence, a negative outcome is posited for the *nouveaux riches*: Temporary advantage yields to misfortune (Theog. 202–3). Characterized by *hubris* ‘arro-

gance', they indulge in *koros* 'glutting'. This arrogance seems to subsume the very ambition underlying an improvement in their material condition. Pindar can warn both aphoristically and mythologically that it is necessary to suppress *hybris* and *koros* (*Is.* 3/4.2: "restrains destructive *koros* in his heart"; *Pyth.* 4.150: "[Pelias] fattening *ploutos*"). The necessary downfall of rich "bad men" can be worked in an entropic process, implementing a subversion of their *noos* 'mind' or exploiting an innate lack of intelligence or sanity. Solon fr. 6 combines the processes: "the *dēmos* 'common people' may follow their leaders best, | neither too much released nor constrained; | for *koros* 'glut' breeds *hubris* 'arrogance', whenever wealth attends | men whose *noos* 'mind' is not straight." A similar citation is Theognis 683–86, as quoted above. Bacchylides introduces the idea in a mythological exemplum, when he describes the derangement of the daughters of Proitos who boasted that their father was wealthier than the goddess Hera (11.40–56; compare 15.57–63, ending in a similar exemplum on *hybris*).

ACQUISITION AND ACQUISITIVENESS

If wealth is devolving on unworthy individuals in archaic elegy, that is not surprising, inasmuch as we are warned against the dangers of acquiring property through evil means, and that wealth, once acquired, can be conducive of immorality or injustice. Consider the passages cited in IIIA and B. In Theognis 86, "*kerdos* 'profit' induces a shameful act," and v. 466 advises, "may *kerdos* that is shameful not master you." A parallel aphorism in choral lyric is Pindar's remark that "shame is stolen in secret by *kerdos*" (*Nem.* 9.33). This commentary appears pervaded by a class chauvinism, in which inherited wealth is valued as divinely sanctioned, while acquired wealth is suspect. Not only does the appetite for betterment induce immorality individually, but it is also contributory to antisocial behavior that damages the community. Solon speaks of "citizens motivated by *khrēmata* who are willing to destroy a great city, in their follies" (fr. 4.5–6), and boasts of his prudence in rejecting boundless *ploutos* and tyranny (fr. 33.5–6). Theognis relates acts of political corruption "for the sake of private *kerdea* 'profits' and power" (45–46). The idea culminates in the stark juxtaposition of private profit and public misfortune. Significantly, the elegiac evaluation of profit-seeking is seen where *kerdos* 'advantage' is juxtaposed with immorality (Arch. fr. 93a; Pin. *Nem.* 7.17–20; 9.31–34; Sim. fr. 36; Theog. 39–52; 83–86; 401–6; 823–24; 833–36; cf. Theog. 563–66, a rare positive passage).

That wealth does not promote immoral behavior is owed to its accompaniment by *aretē* 'virtue', *dikē* 'justice', and *sophia* 'wisdom'. That conclusion is implicit in the passages authorizing the possession of wealth *only* in conjunction with such moral qualities. The praise of liberality provides a parallel assurance that riches are rightly held and are likely to be, if not protected by the gods, at least not stimulatory of divine envy. This belief is present in Theognis 979–82, linked

with practical personal intervention on behalf of a *philos* ‘friend’ (in a factional context). The praise of generosity is even more prominent in epinician lyric, where such allusions balance the ostentation inherent in the revelry on behalf of the victor. Two passages of Pindar are helpful: *Ol.* 5.23–24: “if a person cultivates a healthy *olbos* ‘prosperity’, I being generous (verb: *exarkeō*) and adding in fair repute, let him not seek in vain to be a god”; *Nem.* 1.31–33: “I do not delight to have great *ploutos*, hiding it away in the house, I but being generous (*exarkeō*) to friends both to enjoy my I possessions and gain good repute from them” The concept of generosity is balanced by the avoidance of hoarding not only here but in *Isthmian* 1.67–68 a negative injunction: “. . . But if someone tends hidden *ploutos* within, I while he takes pleasure in oppressing others, I he does not consider that he is paying his soul over to Hades without repute.”

Underpinning the interpretation of self-advancement as subversive is the argument that the desire for material goods is insatiable, unlike other human appetites. Material appetition can even overcome *koros* ‘satiety’. Solon fr. 13.71–73 presents the phenomenon thus: “No manifest limit of *ploutos* ‘wealth’ exists for men; I whoever of us has now the greatest substance for life, I they are eager for two-fold that. Who will satiate everyone?” Theognis notes that “there is satiety of everything except *ploutos*” (596), and that “you cannot satiate your spirit with *ploutos*” (1158). An opportunistic person can set no check on his appetitiveness, inevitably causing others damage if he is not restrained externally. Thus, the pursuit of upward mobility can become a perversion of individual ambition. Pindar and Bacchylides reflect the same attitude, but perforce approach it negatively in pondering the human condition on behalf of honorands who would have appeared incredibly wealthy to the audience of a type of performance that itself risked appearing excessive or overbearing.

Just as elegy lacks a nonpejorative rationale for enrichment of members of the *dēmos*, the processes by which aristocrats become impoverished are not much evidenced. Variability of fortune and divine intervention are, of course, two causes for the existence of a poor but virtuous aristocrat. As for mundane aetiology, some passages, speaking of property acquired immorally, focus on rapacious misappropriation. Solon fr. 4.12–13, notes stealing by persons “sparing nothing of sacred or public *kteana* ‘possessions’,” and Theog. 1149 has persons with their thoughts on “other persons’ *kteana* ‘possessions’.” In parallel phrasing, Bacchylides mentions hybris “which quickly provides another man’s wealth and power” (15.59–60). Moreover, Theognis notably claims to have lost his wealth through robbery or aggression in his lament that “. . . vengeance has not appeared for us I over the men who have our *khrēmata* ‘property’, I having robbed it by violence” (345–47). He concludes by imagining himself a hellhound who will drink his enemies’ blood. Vs. 831–32 may be a concise echo of the same thought: “I lost my *khrēmata* ‘property’ by good faith; I saved it by faithlessness. I The thought of both is difficult.” Furthermore, the extended metaphor of the ship of state in vs. 667–82 is introduced by the proviso,

“if I had the *khrēmata*, Simonides, that I once had, I would not be distressed in keeping company with the *agathoi*.” Unfortunately, it is hard to generalize from this perspective on impoverishment since such claims are difficult to parallel elsewhere. The absence of portrayals, however, of deserved or at least self-induced impoverishment by aristocrats is quite striking. That cannot be unconnected with the feeling that *hybris* succeeds, objectionable though that conclusion may be, for some duration of time. The one exception, a fragment of the fifth-century elegist Euenus of Paros, offers “*hybris* which profiting not at all, still does wrong” (fr. 7). Yet, that thought seems to belong to a different tradition of commentary on the morality of acquisition and upward mobility.

Exploiting one’s chances and ambition toward material betterment are not treated with universal contempt in extant poetry. A scatter of passages offers a more balanced picture, one which common sense advises must have reflected the actual behavior of many individuals and its reception by some segments of society. Greece in the seventh and sixth centuries was undergoing much economic expansion that cannot all have been marginalized in normative terms. The hostility of the Theognidea toward infiltrators into the ranks of elite betrays that increases in economic rank carried acceptance of claims to sociopolitical status. It is, however, striking that references to acquisition, portrayed positively, lack the coherence and systemization that the negative reflections seem to demonstrate.

Phocylides fr. 7 is remarkable for its isolation from the rest of elegy on upward mobility: “Desiring *ploutos*, take on the cultivation of rich land: I for they say land is the horn of Amalthea.” Consider also how Bacchylides treats enrichment in fr. 20B.14–16 as typical of the grandiose dreams amid drinking without a hint that there would be any disapproval about “wheat-bearing ships carrying the greatest *ploutos* from Egypt on the brilliant sea.” The sentiment is a commonplace since it is repeated in Pindar fr. 124, where we are in our cups “all equally sailing on a sea of *polukhrusos* ‘very golden’ *ploutos* ‘wealth’ toward a fictitious cape; whoever is *akhrēmōn* ‘needy’ then becomes *aphneos* ‘affluent’, and indeed even the *plouteuntes* ‘wealthy’ will exalt their minds, mastered by the arrows of the vine.”

POVERTY

In the archaic Greek “shame culture,” poverty was undoubtedly a profound misfortune (IV.A). It is standard to link poverty with old age, death, and disease as incontrovertible ills (Ba. 1.170–71; Theog. 173–74; 1129–32). The concept of *peniē* ‘poverty’ is accompanied by a characteristic vocabulary. Mimnermus has “the household wasted (verb: *trukhō*)” (fr. 2.11–12; cf. Theog. 752). Poverty (*peniē* or *akhrēmosunē*) is *teiromenē* ‘wasting’ (Theog. 182, 684, 752), *thumophthoros* ‘spirit-destroying’ (Theognis 155–58, 1129, fr. 4; cf. Hes. *Works* 717), and *oulomenē* ‘destructive’ (156, 1062; cf. *Works* 717; *Theogony* 593). Poverty masters a man (root: *dam[n]-*), as in Alc. fr. 364 and Theognis 173–

82. It is *khalepē* ‘grievous’ (Theog. 180, 182, 684, 752, fr. 4) and *deilē* ‘evil’ (Theog. 351, 649). Thus, *peniē* is associated with *amēkhaniē* ‘resourcelessness’ (Theog. 385, 619, 1114a-b; cf. Alc. fr. 364), as is *khreḗmosunē* ‘need’ in Theognis 392. Poverty is not prominent in surviving choral lyric, a hardly surprising condition, given its subject matter. One reference, however, in Bacchylides speaks of *amakhanos penia* ‘resourceless poverty’ (1.170–71), congruent with the elegiac semantic system. Since one can pray for wealth, the prayer for release from poverty also makes its grim appearance (IV.A.1). Verses 561–62 in Theognis denote a special route for fulfillment of the prayer for release from poverty, as the poet prays to acquire the *khreḗmata* ‘property’ of his enemies for himself and his friends.

To see poverty as a misfortune would appear to be simple common sense, but it is notable the degree to which compensating or ameliorating contentions are minimized in our sources. The idea that “you can’t take it with you” can act to lessen tensions over differences in economic status. Wealth can be rejected in face of mortality (see I.A.2a), but Solon fr. 24 and its equivalent Theog. 719–28 do not seem too prominent when compared with the citations treating poverty as an unmitigated evil. The corresponding note in epinician lyric, again represented by one passage, Pin. *Nem.* 7.17–20, is muted: That rich man and poor man equally face death helps the point that the *sophoi* ‘wise’ are acute enough to foresee and to avoid harm from *kerdos* ‘gain’. Similarly, the cliché that hard times test a person’s mettle appears in only a single elegiac passage, Theog. 393–400 (IV.A.2). “In *peniē*, the base man and the much better man | shine forth, whenever *khreḗmosunē* ‘need’ takes hold; | for whose mind thinks just thoughts, has always | straight judgment grown fixed in his breast. | The mind of the other abides with neither evil nor goods, | but it is necessary that the good man endure and bear varying vicissitudes.” Even here, however, more common sentiments, such as the superiority of *aretē* and justice to wealth and the mental confusion of the base or lower class, quickly occupy center stage. The characteristic metaphor for the testing of human character, that of the *basanos* ‘touchstone’, used for evaluating the gold content of metal, is never linked with the “testing” intrinsic to experiencing poverty.

Since wealth was so intensely felt to be the birthright of the aristocrat, who was assumed to possess inherited personal worth, impoverishment manifestly threatened that noble’s identity, since it could deprive him of his capacity for honorable activity (IV.B). Theognis 267–70 explains that: “Indeed *peniē* is well known, even though it should not be ours, | for neither does it come into the marketplace nor the law courts, | and everywhere has the lesser place, and everywhere is mocked, | and is everywhere equally hated, wherever it may be.” In vs. 173–83 (where poverty is seen to subdue a man), “every man subdued by *peniē* is able neither to say nor do anything: his tongue is bound.” Theognis also notes that “everyone dishonors a *penikhros* ‘poor man’ ” (621–22). The poor man’s inability to participate in public affairs was symbolized by this voicelessness, an image reappearing in 669–70: “I am voiceless from *khreḗmosunē* ‘want’.” Thus, the taunt over impoverishment is an assault on an aristo-

crat's identity envisaged in several Theognidean passages (IV.B.1: e.g., 155–58 cited above; cf. Hes. *Works* 717–18).

A salient facet of archaic economic awareness was that the main context in which gainful activity by an aristocrat could be openly lauded was an effort to escape poverty (IV.C). A series of passages authorize any endeavor to escape pauperhood. Note Theog. 179–80: “It is necessary equally on land and on the broad back | of the sea to seek release from *peniē* ‘poverty’, Kynos” (cf. fr. 4). Thus upward social mobility can be approved when it involves recovery of previous status. Yet, such activity was still tainted by the general impropriety of acquisition. Theognis offers in vs. 831–32: “I lost my *khrēmata* ‘possessions’ through faithfulness, I saved them through faithlessness: | the knowledge of both is painful.” Solon fr. 13.41–42 offers “the works of *peniē* do violence to him, and he decides to acquire (verb: *ptaomai*) much *khrēmata* ‘property’ in any way.” Theognis 383–92 amplifies “. . . those, from evil | acts are restraining their hearts, nevertheless | receive *peniē*, the mother of *amēkhaniē*, though cherishing justice; | (poverty) beguiles the heart of man into wantonness, | damaging judgment in his breast out of strong necessity. | Unwilling to endure suffering many humiliations, | yielding to *khrēmosunē* ‘want’, that teaches many evils, | lies, and deceits, and destructive quarrels, | even a man who is unwilling, a man whom no evil befits: | for (poverty) engenders grievous *amēkhaniē* ‘resourcelessness’.” Wealth went with aristocratic birth, so that the injustice and immorality of aggrandizement could be justified only as a response to pauperization.

WEALTH, POVERTY, AND SOCIAL CONDITIONS

Wider ramifications can be drawn from the negative impact of acquisitiveness on society, with the Theognidea standing as a treasury of relevant commentary. Yet the influence of the same themes is illustrated by their appearance, once more rather elusively, in lyric. We have already seen how wealth often gravitates into the hands of the base, and that the pursuit of wealth is fraught with temptations for antisocial acts. The affective ties between members of society can also be viewed as dependent on economic status (V.B). I have already discussed how Theognis can explicate this condition in 699–718, where he balances gnomic statements with mythological counterexamples (note also 267–70, cited on the alienating effects of poverty). The impoverished noble is also alienated from his associations with other members of the elite and even from partisans of his faction. Therefore, enrichment and impoverishment tend to subvert the natural alignments in society (e.g., Ba. 10.49–51: *ploutos* “‘makes a useless man useful’”).

In commentary that could be considered the essence of aristocratic reflection on social mobility, Alcaeus deliberately chooses as his mouthpiece a Spartan, presumably for the sake of his community's reputation for austerity and for suppression of social differentiation (fr. 360): “for they say that Aristodemus

once spoke a not witless saying at Sparta: | *khṛēmata* is the man, not one *pen-ikhros* ‘poor man’ is good or honored.” This fragment is found among the *scholia* (marginalia) to Pindar *Isthmian* 2.6–11. Pindar, who identifies the speaker as an Argive, says that the phrase *khṛēmata*, *khṛēmata anēr* ‘property, property is the man’ was spoken when the speaker was “‘left without *kteana* ‘possessions’ and friends.”

The Theognidea are eloquent on the subject of marriages, or rather misalliances, predicated on seeking a mate for the purpose of material advancement (see V.B.1). Noble men and women end up mating with those of lower classes, who are assumed to be vicious in character. The result is an adulteration of the genetic resources of the *polis*, since inherited excellence is diluted: Theog. 183–92: “In rams and asses and horses we seek, Kyrnos, | the well-bred, and anyone wishes them to derive from good stock, | but a good man is not troubled to marry the bad daughter | of a bad father, if someone gives him much *khṛēmata* ‘property’; | and a woman does not refuse to be the wife of a bad man | who is *plousios* ‘rich’, but she prefers an *aphneos* ‘rich’ man over a good one; | They honor *khṛēmata*, and a good man marries of bad stock | and a bad man from good; *ploutos* has mixed the bloodlines. | So do not wonder, son of Polupaus, that the race of the citizens | is made obscure, for good things are mingled with bad.” Another reaction, albeit extreme, to the “corrosive” influence of wealth on society was to exalt an egotistical attitude toward consumption (V.B.2). Theognis can recommend to his fellow aristocrats that they consume their estates in their own lives, so that nothing is left to be inherited by their relatives, toward whom they are to feel no ties of affinity. In 903–32, he begins by stating that “‘whoever watches the spending of his estate regarding his *khṛēmata* has the most praiseworthy *aretē* among the knowing” (903–4). He turns to the difficulty of knowing whether to stint or to live more pleasantly, inasmuch as the length of life is unforeseeable (905–14). For the self-abnegating *plousios* a premature death brought his *khṛēmata* to an heir he did not wish (915–19), but the man who consumed his *khṛēmata* must play the beggar to his friends (verb: *ptō-kheuō*). He concludes with verses 923–32. “So, Demokleis, it is best of all regarding *khṛēmata* | to control expenditure and to pay attention. | Thus laboring before you would not share your labor with another, | nor being a beggar (*ptōkheuō*) would you live out slavery, | and, if you reach old age, all your *khṛēmata* will not have run away. | In such a generation, it is best to have *khṛēmata*: | if you are wealthy (*plouteō*), there are many friends, but if you are poor (*penomai*), | few, and (you are) no longer equally the same good man.”

Yet it is equally important to note that extreme statements of the disruption inherent in social mobility are limited to elegy, and are especially prominent in the Theognidea. This is presumably because elegy is significantly diachronic in perspective. By convention, it is concerned with the intergenerational transmission of norms and the problems intrinsic to that process. Hence, the upward mobility of the supposedly base lower classes into the elite and the downward mobility of aristocrats appear especially foreboding. Epinician poetry is more

synchronic in its outlook, with a stress on the virtuous deployment of wealth by nobles in the present. There are indications that high social standing is vulnerable, as well as dependent upon the divine will, but victory odes focus on the possibility that the wealth of their honorands will be utilized to underwrite their pursuit of virtue.

That difference in perspective underlies the broader appreciation of the causation of affluence in epinician lyric, which transcends the almost claustrophobic system of Theognidean elegy, where it at times appears that nothing is left to be said once it is “established” that the genetic monopoly of the traditional elite on the highest level of moral attainment ought to be united with the permanent possession of a disproportionate share of communal assets. Pindar recognizes a variety of causalities for the wealth of a community (V.C). In *olbios* ‘wealthy’ Corinth, *eunomia* ‘good government’ is present, the foundation of cities along with “*Dika* ‘justice’ and *Eirana* ‘peace’, the stewards of *ploutos* for men, the golden children of well-counseling *Themis* ‘law’ ” (*Ol.* 13.3–8). Peace is itself several times credited as the cause of wealth: Ba. fr. 4.61–62: “peace engenders noble *ploutos* for mortals”; *Lyr. Adesp.* fr. 103: “O sweet peace, granter of *ploutos* to mortals.” Concomitantly, *stasis* ‘civil strife’ was recognized as a cause for impoverishment: “plucking out spiteful *stasis* from his heart, the giver of *penia*, the loathesome nurse of youth” (fr. 109). Solon fr. 4 provides specifics on how the self-aggrandizing behavior of the elite was creating *stasis*, and, in fr. 5, we are told how Solon protected the property and political power of the aristocrats.

CONCLUSION

There is little reflection in the poets under discussion of the Hesiodic vision of work and affluence. Hesiod envisaged that status of the *plousios* ‘rich man’ prompts his neighbor to strive for *aphenos* ‘riches’ (*Works* 20–24). This good type of *eris* ‘strife’ is essentially competition, not only setting potter against potter and carpenter against carpenter, but even beggar against beggar (24–26). The adoption of a work ethic avoids the threat of hunger, making men wealthy in flocks and *aphneios* ‘affluent’ (299–312; cf. 498–501). In contrast to elegiac views, *aretē* ‘virtue’ and *kudos* ‘glory’ are not separate attainments to be juxtaposed to *ploutos*, but accompany the *ploutos* achieved by work (313). Although shame here also attaches to the state of poverty—and *tharsos* ‘confidence’ to *olbos*—work is the antidote that can operate only when the mind has diverted itself from others’ *kteana* and *khrēmata* (315–20; cf. 637–38). It is through work, a commitment to just dealings (280–81), and a submission to the dictates of temporality (cf. 306–7; 455–57; 493–97; 630–40; 686; 826–27) that men of the age of iron may approach the bliss of the golden race of men (109–20) who are, even in the underworld, the givers of wealth to men (125–26). *Khrēmata* and *olbos* are god given (and thus durable), but divine grant is predicated in Hesiod on just acquisition, attained through working (320–26; cf.

Theogony 420; 974). There are, to be sure, many allusions in Theognis to observing *kairos* ‘timeliness’ but they are not attached to the achievement of prosperity in the manner of the Hesiodic references.

The *ethos* of the archaic aristocrat offers many dismaying signs of fixation on a “zero-sum” game. The elite, particularly as represented in elegy, saw moral qualities and socioeconomic status as thoroughly genetic. Nobles, placing so heavy a burden on themselves in maintaining unchanged the distribution of goods and status within their cities, were bound to be affected by alterations in the status quo worked both by initiative or carelessness and by the play of factors beyond personal control. The archaic period was a era marked by growing population and wealth and by a greater economic differentiation. We have encountered many denunciations of such changes; there were many condemnations of their beneficiaries and attempts to subvert their successes, at least psychologically. The entrepreneurs, traders, and workshop proprietors who helped to spur the growth of archaic cities are in a significant sense *unsung* heroes. They were not entirely unchampioned, but recovering their ideology entails investigating the later vestiges of archaic reciprocity, and that transcends the scope of this chapter.

TABLE OF ATTESTATIONS

I. Wealth

A. Wealth and other goods:

1. Prized with other goods:

@Solon fr. 23 ~ Theog. 1253–54 (boys; horses; dogs; foreign friends); also *Carm. Con.* 7 (=890; health, beauty, youth)

~Ba. 20B.13–16; cf. Pin. *Ol.* 1.1–2; 3.42; fr. 221.3

2. Rejected for other goods:

@Arch. fr. 19; Theog. 145–48 (*dikaiousunē* ‘justice’); 315–18 (for *aretē* and *gnōmē* ‘judgment’); 409–410 (*aidos* ‘shame’), cf. 1161–62 (for erotic association with aristocrats); 1063–68 (for sexual gratification); 1155–56 (= AG 10.113; for a simple life); also *Lyr. Adesp.* fr. 70 (988); cf. Theog. 77–78; An. in AG 11.47

~Ari. fr. 1 (813; health); cf. Ba. 1.160 (*aretē* ‘virtue’); Pin. *Nem.* 8.37–39

a. wealth to be rejected, because of human mortality:

@Solon fr. 24–Theog. 719–28

~Pin. *Nem.* 7.17–20

B. The origin and durability of wealth:

1. Wealth as gift of the gods:

@Sem. fr. 1.9–10; Sol. fr. 13.9–10, cf. 69–70; Theog. 133–42; 149–50; 155–58; 165–66; 197–208; 227–32; 319–22; 373–92; 865–68; 1115–22; fr. 4; fr. 5; cf. 373–92; also *Carm. Pop.* 33 (879)

~Sa./Alc. fr. S276; Ba. 5.50–55; 14B.1–6; fr. 65A.1–8; cf. 3.11–14*; Pin. *Pyth.* 3.104–10; 8.73–78; 12.28–30; *Nem.* 8.17–18; 9.45–47*; *Is.* 3/4.5–6; fr. 222; cf. Ib. fr. S166

a. hence prayed for:

@Theog. 523–26; 885–86; 1115–16; 1119–22; also *Carm. Con.* 18 (901), 29b (912b); *Lyr. Adesp.* 20f.i (938); cf. Hippon. fr. 32; fr. 38; 129–30
-Pin. *Ol.* 6.97–100*; *Pyth.* 1.46–50*; *Pyth.* 3.104–10; *Pyth.* 10.17–21*; cf. *Nem.* 8.37–39

b. wealth personified as deity:

@Theog. 523–26; 1117–18; Hippon. fr. 36; also *Carm. Con.* 2 (885; son of Demeter); Tim. fr. 5 (731)

-*Lyr. Adesp.* 45 (963)

c. gift of fate:

@Theog. 129–38

-Pin. *Ol.* 2.21–22 (cf. 36–37); *Pyth.* 2.56–57; 5.1–9; cf. Ba. 24.8–10??

2. God-given wealth is durable:

@Sol. fr. 13.9–10; Theog. 197–208

-Pin. *Nem.* 8.17–18; *Is.* 3/4.5–6; fr. 222; cf. fr. 134

a. wealth of the middle ranks is longer lasting:

-Pin. *Pyth.* 11.52–53

3. Material condition variable:

@Sol. fr. 15 (-Theog. 315–18); Theog. 155–58; 167–68; 227–32; 315–18; 352–55; 557–60; 657–66; fr. 4

-Ba. fr. 24; fr. 54; Pin. *Pyth.* 3.104–10; *Pyth.* 8.73–78; Sim. fr. 16 (521); 17 (522)

C. The appraisal of wealth

1. Wealth most or universally honored:

@Theog. 183–90; 523–26; 619–22; 699–718 (more than moral or intellectual attainments); 1117–18

2. Praise/invoke of individual or civic wealth:

-Ba. 3.11–14, 22*; Pin. *Ol.* 1.8–11*; 6.71–74*; *Ol.* 7.1–4; *Pyth.* 1.46–50*; 2.56–61*; 6.47–49*; *Nem.* 5.18–19*; 7.58–60*; 9.3–4*; *Is.* 3/4.17a–b*; fr. 119*; cf. for civic wealth: Pin. *Ol.* 13.3–10; *Nem.* 1.14–15; fr. 122

a. Envy of wealth: Pin. *Pyth.* 11.29–30

II. Affluence and Moral Character

A. Wealth proper with *aretē* ‘virtue’ or *dikē* ‘justice’:

@Sol. fr. 13.7–8; Theog. 27–30; 523–26; 753–56; 1007–12; also *Carm. Con.* 7 (890)

-Ba. 3.76–98*; Pin. *Ol.* 2.8–11*, 53–56; *Ol.* 5.23–24; 6.71–74*; *Pyth.* 2.56–61* (*sophia*); *Pyth.* 5.1–14*; *Nem.* 7.58–60*; 9.45–47*; *Nem.* 11.11–16*; *Is.* 3/4.1–3; 5.11–15; Sappho fr. 148; cf. Pin. *Pyth.* 3.104–10

1. Pursuit of *aretē* superior to wealth:

@Solon fr. 15–Theog. 315–18; 465–66; also *Lyr. Adesp.* 43 (961); cf. Theog. 865–68

-Pin. *Pyth.* 8.88–92; *Nem.* 9.31–33; cf. fr. 52d.40–48; also An. fr. 39 (384; early poets nonmercenary)

B. Just/virtuous men afflicted with poverty:

@Sol. fr. 15 (-Theog. 315–18); Theog. 145–48; 373–92; 683–86; 731–52; 1059–62; cf. 149–50; 465–66; 865–68; and Hippon. fr. 36

C. Base men acquire wealth:

@Sol. fr. 4.12–15; 6 (-Theog. 153–54), 15 (-Theog. 315–18); Theog. 145–48;

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149–50; 183–90; 373–92; 683–86 (*aidries* ‘foolish’); 731–52; 865–68 (*akh-rēstoisi* ‘useless’); 1059–62; 1117–18

~Ba. 1.160–63; 10.49–51

1. Their wealth destroys them:

@Theog. 197–208

~Sappho fr. 148

a. specifically by stimulating *hubris/koros* ‘arrogance/glut’:

@Sol. fr. 6 (~Theog. 153–54); fr. 13.71–73; Theog. 833–36; cf. 27–30; 197–208; 731–52; cf. Xen. fr. 3

~Ba. 15.57–63; Pin. *Ol.* 1.53–58; *Pyth.* 2.26–30; cf. Pin. *Pyth.* 4.148–51; *Is.* 3/4.1–3

b. or by destroying their *noos* ‘mind’ or exploiting their lack of *noos*:

@Sol. fr. 6 (~Theog. 153–54); 227–32; 319–22; 683–86; fr. 5

~Ba. 1.160–63; 11.40–55; Pin. fr. 157; fr. 222?; cf. Pin. *Pyth.* 6.47–49

III. Acquisition and Acquisitiveness

A. Pursuit of material advantage conducive of evil:

@Theog. 83–86 (cf. 563–66); 197–208; 401–6; 465–66; cf. 607–10; Tim. fr. 5 (731)

~Sim. fr. 36 (541); Pindar *Pyth.* 3.54–57; 4.139–41; *Nem.* 7.17–20; 9.31–33; fr. 123; cf. fr. 219

1. In particular appetite conducive of unjust/antisocial behavior:

@Sol. fr. 4.6, 12; Theog. 39–52; cf. Sol. fr. 33, 34

~Pin. *Is.* 1.67–68

2. Private profit/public misfortune:

@Theog. 39–52; 823–24; 833–36; cf. Arch. 93a

3. Contrast role of liberality:

@Theog. 979–82

~Pin. *Ol.* 5.23–24; 10.88–90; *Nem.* 1.31–33; cf. *Is.* 1.67–68

B. Wealth achieved through evil:

@Sol. fr. 4.5–6, 11–15; 33.5; Theog. 145–48; 197–208; 221–26; 831–32; 1135–50 (esp. 1149–50)

~Ba. 15.57–60

1. (Poet’s) wealth lost through evil or robbery:

@Theog. 341–50; 831–32; cf. *Carm. Con.* 26 (909); Sol. fr. 4.23; 34; Theog. 667–82; 955–56

~cf. Pin. *Pyth.* 8.13–14

2. *hubris* induces wrong-doing without hope of profit: Euenus fr. 7

C. Desire for property is insatiable:

@Sol. fr. 13.71–73–Theog. 227–32; 595–602; 1157–58

~cf. Ba. 1.160; Pin. *Nem.* 11.47–48

D. Acquisition portrayed positively:

1. Innocent dream of wealth: ~Ba. fr. 20B.14–16; Pin. fr. 124

2. Agriculture is road to wealth: @Ph. fr. 7

IV. Poverty

A. As evil or anxiety:

@Mim. fr. 2.11–12; Sol. fr. 13.41–42; Theog. 155–58; 173–82 (like old age or disease); 351–54; 373–92; 523–26; 619–22; 649–52; 667–82; 683–86;

750–52 (cf. 731–52); 1059–62; 1114a–b; 1115–16; 1129–32; fr. 4; Tyr. fr. 10.1–10; also Alc. fr. 364

-Ba. 1.170–71

1. Prayer for release from poverty:

@Theog. 351–54; 1115–16; cf. 561–62

2. Poverty as a testing:

@Theog. 393–98

- B. Depriving of capacity for honorable activity:

@Theog. 173–82; 267–70; 373–92; 621–22; 667–82, 931–32; cf. also Alc. fr. 360

1. Taunt about poverty:

@Theog. 155–58; 1129–32; fr. 4; cf. 1209–16

- C. Any activity acceptable for escape from poverty:

@Sol. fr. 13.41–42; Theog. 173–82; 831–32; fr. 4; cf. 383–92; cf. Sappho fr. 31.17?

V. Wealth, Poverty, and Social Conditions

- A. Wealth is force for (negative) social change:

@Theog. 183–92; 699–718

-Ba. 10.49–51

- B. Social affinities dependent on wealth:

@Theog. 183–92; 905–32; also Alc. fr. 360; cf. Theog. 267–70

-Pin. *Is.* 2.6–11

1. Wealth is dysgenic:

@Theog. 183–92

2. Personal consumption best:

@Theog. 271–76; 903–32

- C. The causes of communal wealth and poverty:

1. Good constitutional order renders cities prosperous:

-Ba. 14B.1–6 (*Hestia*); Pin. *Ol.* 13.3–10

2. Peace engenders wealth:

-Ba. fr. 4.58–62; *Lyr. Adesp.* fr. 103; Pin. *Ol.* 13.3–10; fr. 109

3. Conquering land:

-Pin. *Paeon* 52b.59–63

4. *Stasis* 'civil strife' impoverishes a city:

@Solon fr. 4; cf. fr. 5

-Pin. fr. 109

5. Slackness in combat: @Tyr. 12.6

ABBREVIATIONS:

Alcaeus = Alc.; Alcman; Archilochus = Arch.; Ariphron = Ari.; Bacchylides = Ba.; *Carmina Convivialia* = *Carm. Con.*; *Carmina Popularia* = *Carm. Pop.*; *Elegiaci Adespota* = *El. Adesp.*; Euenus; Hipponax; Ibycus = Ib.; *Lyrical Adespota* = *Lyr. Adesp.*; Mimnermus = Mim.; Phocylides = Ph.; Pindar = Pin.; Sappho = Sa.; Semonides = Sem.; Simonides = Sim.; Solon = Sol.; Theognis = Theog.; Timocreon = Tim.; Tyrtaeus = Try.; Xenophanes = Xen.

VOCABULARY

1. *plōûtos* 'wealth'; *ploutéō* 'to be wealthy'; *plouísios* 'wealthy'; *bathúploutos* 'exceedingly rich'; *áphenos* 'riches'; *aphneiós* or *aphneós* 'rich'; *ólbos* 'wealth' or 'happiness'; *ólbios* 'wealthy' or 'happy'; *panólbios* 'truly happy' or 'truly wealthy'
2. *pénēs* 'poor man'; *penía* (*peníē*) 'poverty'; *penikhrós* 'poor man'; *pénomai* 'to be poor'; *khrēmosúnē* 'need'; *akhrēmōn* 'needy'; *akhrēmosúnē* 'neediness'; *ptōkhós* 'beggar'; *ptōkheúō* 'to be a beggar'
3. *páomai* 'acquire'; *ktáomai* 'to get'; *ktéanon* 'piece of property'; *ktéar* 'piece of property'
4. *khrēma* 'thing of use'; *khrēmata* 'property'
5. *kérdos* 'profit'; *philokerdēs* 'desirous of gain'; *kakokerdēs* 'making base gain'; *akérdeia* 'want of gain'; *kerdaíno* 'derive a profit'; *óphelos* 'advantage'
6. *árguros* 'silver'; *arguréos* (adj.); *khrusós* 'gold'; *khrusíos* (*khrúseos*) 'golden'; *polukhrúsos* 'rich in gold'; *pánkhrusos* 'entirely gold'

Images of Justice in Early Greek Poetry

GREGORY NAGY

This work centers on the earliest Greek poetic visualizations of *dikê* both in the short-range sense of “judgment” and in the long-range sense of “justice,” even “Justice,” which is also personified as a goddess. Two primary images come into play: (1) a just king in a well-tended and fertile garden or cultivated field, as described in *Odyssey*, xix 106–14, and (2) a crooked line that becomes straight *in the fullness of time*, a teleological concept that is elaborated most clearly in the *Works and Days* of Hesiod. In the primary texts that I quote, key words signaling these images will be underlined, not simply italicized, in order to highlight both the continuity and the coherence of the traditions that shaped the imagery.

Let us proceed to the first image, that of a king in a garden or a cultivated field, as pictured by a disguised Odysseus who is at the moment speaking to his wife, Penelope:

My lady, no one among mortals anywhere on this vast earth
 could utter words of reproach about you. For truly your renown [*kleos*] reaches
 the wide heavens
 as that of some blameless king, who, godlike,
 rules over men great in number and mighty,
 upholding the ways of good judgment [*eudikiai*], and the dark earth bears
 wheat and barley, while the trees are weighed down with fruit,
 the sheep produce young without fail, and the sea provides fish,
 all thanks to his good works, and the people achieve their goals because of him.
Odyssey, xix 107–14¹

The plural noun *eudikiai* at line 111, which I have translated as “ways of good judgment,” is built on the noun *dikê* in the sense of “judgment,” as conventionally rendered by kings. An idealized example is in Hesiod, *Theogony* 86, where the just king is described as deciding what is right or wrong by pronouncing *dikai* “judgments” that are “straight.”

Surrounded by the well-tended and fertile garden or cultivated field, as envisioned by the *Odyssey*, is the King as the embodiment of Society itself.² Metaphorically, he is both the cause and the effect of the “good tending.” The image of the king in this setting makes it implicit that, inasmuch as the king pronounces good judgments, vegetation flourishes: To that extent, the king is the cause. Conversely, inasmuch as vegetation flourishes, he has the authority to make judgments: To that extent, the king is the effect. The fertility and prosperity of the garden or cultivated field are the visible sign of the just king. Since Odysseus is counting on the recovery of his kingdom from the unjust suitors who are courting his wife, the fact that he invokes this image of a just king who is surrounded by flourishing vegetation—and the fact that he applies this image to his long-estranged wife—becomes a telling sign of the ultimate state of fertility and prosperity that will prevail by the time the narrative of the *Odyssey* draws to a close.

This paradisiacal image in the Greek poetic tradition is readily comparable to images found in other poetic traditions that took shape from other Indo-European languages cognate with the Greek. I cite a striking example from the very end of the “Nala” story as retold in the larger narrative framework of the Indic national epic, the *Mahābhārata*, which describes the ultimate state of fertility and prosperity enjoyed by the just king Nala after he finally recovers both his lost kingdom and his own long-estranged wife:

King Nala joyously passed his days like the king of the Gods in the Nandana park. Having found renown among the kings in Jambūdvīpa, the glorious monarch once more lived in the kingdom he had regained. And he offered up, according to the precepts, many sacrifices with plentiful stipends. . . . [At this point, the narrative switches back to the narrator, who is speaking to his audience.] Reflecting always on the impermanence of man’s riches, be serene at their coming and going, and do not worry. To him who narrates the great story of Nala and listens to it ceaselessly, misfortune will never befall. Riches will flow to him and he will become rich. After hearing this ancient and eternal great story one shall find sons, grandsons, cattle, and prominence among men, and without a doubt he will be happy in health and love.

Mahābhārata 3.78³

In this passage taken from Indic traditions cognate with the Greek, it is clear that the *moral correctness* of the king’s justice, as validated by the fertility and prosperity signaled in the vision of the Nandana “park,” is coextensive with his *ritual correctness*. Moreover, it is the premise of this narrative that the fertility and prosperity earned by the king can extend even to those who atten-

tively listen to the narrative itself, as if the fertility and prosperity were immanent in the very words that tell about the king's justice. The symbolism of the Nandana "park," the ultimate point of reference for the well-tended and flourishing vegetal setting that marks the just king, is further elaborated in the following description:

He [i.e., the hero Arjuna] looked upon the lovely city, which is frequented by Siddhas and Cāraṇas, and adorned with sacred trees that flower in all seasons, while a fragrant breeze, mixed with the perfumes of flowers and redolent trees, fanned him. And he saw the divine park Nandana, sought out by the hosts of Apsarās, with heavenly blossoming trees that seemed to beckon to him. This world of those of saintly deeds cannot be seen by one who has not done austerities or who has not maintained the fires, nor by those averse to war, those who fail to sacrifice, liars, persons devoid of the learning of the *Veda*, unbathed in sacred fords, outside ritual and gifts. Those base men who disrupt sacrifices and evil-doers who drink liquor, violate their teacher's bed, or eat meat do not set eyes on it at all.

Mahābhārata 3.44⁴

A comparable pattern of coextensiveness between moral and ritual correctness is evident in the Greek traditions. I cite first of all the *Works and Days* of Hesiod, where the moral correctness of *dikê* in the ultimate sense of "justice" is programmatically reinforced by the ritual correctness of the just man. For example, immediately following up on a set of instructions praising justice and condemning the base man who behaves unjustly, the poem proceeds to urge the base man to embrace ritual correctness:

But you should keep your deranged spirit completely away from these things, and, to the best of your ability, you must make sacrifice to the immortal gods, in a holy and pure fashion, and you must burn splendid thigh-portions. On other occasions, you must supplicate them [i.e., the gods] with libations and with burnt offerings, both when you go to bed and when the sacred light of dawn comes, so that they may have a propitious heart and spirit towards you. This way, you will be buying the arable land of others, not the other way around.

Hesiod, *Works and Days* 335–41

Again we see the prospects of fertility and prosperity as the ultimate signal for those who turn to justice.

The conventional Hesiodic injunction that one be *memnêmenos* "mindful" to do what is prescribed applies to matters of either moral or ritual correctness, as in *Works and Days* 298 and 728 respectively. The same root *men(h₂)-, as in Greek *memnêmenos* "mindful," can be found in the Indic name *Manu*, meaning "the mindful one": "This ancestor of the human race gets his name (which is

cognate with English *man*) by virtue of being ‘mindful’ at a sacrifice. Manu is the prototypical sacrificer, whose sheer virtuosity in what Sylvain Lévi has called ‘the delicate art of sacrifice’ confers upon him an incontestable authority in matters of ritual. Since ritual correctness is the foundation of Indic law, the entire Indic corpus of juridical/moral aphorisms is named after him.”⁵ In line with such traditions, then, the very definition of a human being—*Manu* in Indic, or even *man* in a Germanic language like English—is predicated on the human capacity to be “mindful” of ritual and moral correctness.

From the start, I have been using the word *correct* in referring to positive ritual and moral behavior that is envisioned in the symbol of the well-tended and flourishing garden or cultivated field. I did so because *dikê* in the ultimate sense of “justice” is conventionally pictured as *straight* in archaic Greek poetry, and its opposite, *hubris* or “outrage,” as *crooked*. Let us, then, proceed immediately to the second of the two primary images to be examined in this work. This second image is that of a line that starts *crooked* but ends up *straight* in the fullness of time, as elaborated in the implied narrative that underlies the ostensibly nonnarrative surface organization of the *Works and Days* of Hesiod.⁶ Even at the very start of the *Works and Days*, the antithetical images of straightness and crookedness are correlated with *dikê* and *hubris*:

Muses of Pieria, you who make renown [*kleos*] with your songs,
 come and tell of Zeus, making a song about your father,
 on account of whom there are mortals both unworthy of talk and worthy,
 both worth speaking of and not—all on account of great Zeus.
 Easily he gives power, and just as easily he ruins the powerful.
 Easily he diminishes the distinguished, and magnifies the undistinguished.
 Easily he makes straight the crooked and withers the overweening
 —Zeus, the one who thunders on high, who lives in the highest abode.
 Heed me, seeing and hearing as you do, and with *dikê* make straight the
 sanctions [*themistes*].
 While you do that, I am ready to tell genuine things to Perses.

Hesiod, *Works and Days* 1–10

As the king of the universe, Zeus is here being invoked as the absolute standard of justice. When an earthly king renders *dikê*, it is a “judgment” in the short term, but when Zeus as absolute sovereign renders *dikê*, it is simultaneously a “judgment” and “justice” in the long term. With his *dikê*, as signaled at line 9 above, Zeus settles what is right and wrong, thereby effecting a straight line.

As I have argued at length elsewhere about the *Works and Days*, the *dikê* or “judgment” rendered by corrupt kings in their adjudication of the quarrel between the righteous Hesiod and his unrighteous brother Perses was in fact “crooked,” but this short-range “judgment” evolves into long-range “justice” in the fullness of time, dramatized by the actual passage of time in the progression of the poem while Hesiod is speaking to Perses—and while Zeus, as

invoked at the very beginning, is rendering justice by rendering judgment, making straight the *themistes* or “sanctions” (Nagy 1990b: 63–67).

Personified as a goddess, *Dikê* as “Justice” discredits unjust kings who make *dikai* “judgments” that are crooked:

Then there is the virgin *Dikê*, born of Zeus.
 She has great esteem and respect among the gods who abide in Olympus.
 Whenever someone does her harm, using crooked words,
 right away she takes her place at the side of Zeus son of Kronos,
 and she proclaims the intent of men that is without *dikê*, so that the people have
 to pay retribution
 for the deeds of recklessness committed by their kings. These kings, having
 baneful thoughts in their intent,
 pronounce judgments [*dikai*] in a crooked way, making them veer and go
 astray.
 You kings! Guard against these things and make straight your words,
 you devourers of gifts! And put crooked judgments [*dikai*] out of your mind
 completely.

Hesiod, *Works and Days* 256–64

What the poem of the *Works and Days* ultimately achieves is the invalidation of earthly kings and the simultaneous validation of Zeus as heavenly king *and* as absolute standard of justice (Nagy 1990b: 63–67). This validation is conferred by the poem itself, the words of which produce straight *justice* out of a crooked *judgment* in the fullness of time; though originally modeled on the justice of Zeus, the justice of kings is forfeited by the earthly kings in the poem and is actually transferred to Hesiodic poetry. The authoritative voice of the *Works and Days* claims for itself the immanence of *dikê* as “justice,” envisioned simultaneously in the two central images of the flourishing vegetation and the straight line (Nagy 1990b: 63–67). These images come together in an eschatological double vision of a City of *Dikê* “Justice” and a City of *Hubris* “Outrage”:

As for those who render straight judgments [*dikai*] for guest-strangers and for
 local people alike,
 and who do not veer away from what is just [*dikaion*],
 for them, their city flourishes, and the inhabitants blossom.
 Peace, the nurturer of young men, ranges about the land, and never do they
 have wretched war manifested for them by Zeus who sees far and wide.
 Men who have straight justice [*dikê*] are never visited by Hunger
 or by Derangement. Instead, at feasts, they reap the rewards of the works that
 they industriously cared about.
 For them the earth bears much life-sustenance. On the mountains, the oak tree
 bears acorns at the top and bees in the middle.
 Their wooly sheep are laden with fleeces.

Their wives bear children resembling their fathers.
 They flourish with all good things, without fail. And they do not have to find
 their way home
 on ships, but the grain-giving land bears fruit.
 But those who have evil hubris and wanton deeds on their minds
 for them the son of Kronos, wide-seeing Zeus, marks out justice [dikê].
 Many times it happens that an entire city suffers the consequences on account
 of just one evil man
 who transgresses and plans reckless deeds.
 For these men the son of Kronos brings down from the skies a great disaster,
 famine along with pestilence. And the people waste away.
 Their women do not give birth, and their households are depleted—
 all on account of the plans of Zeus the Olympian. There will be a time when
 Zeus will destroy their vast host of fighting men. Or he can exact retribution
 against them by destroying their city-walls
 or their ships sailing over the sea.

Hesiod, *Works and Days* 225–47

Whereas *dikê* as “justice” is envisioned as well-tended and flourishing vegetation, signaling fertility and prosperity, we see that *hubris* signals sterility and dearth. But the barrenness of *hubris* can be caused by either of two negative extremes. Either there is not enough growth or there is too much growth. The latter case is made explicit in ancient Greek botanical lore: The term for excessive leaf or wood production—an ailment leading to *akarpia* or “failure to bear fruit”—was *hubris* (e.g., Theophrastus *Historia plantarum* 2.7.6) (Michellini 1978). A remedy for this kind of *hubris* was pruning, a term for which was *euthunô* “straighten, make straight” (e.g., Theophrastus, *Historia plantarum* 2.7.7).

These combined images of “straight” or “crooked” vegetal flourishing or barrenness are combined in the earliest examples of political poetry, composed for the historical settings of real cities as distinct from the eschatological settings of an ultimate City of *Dikê* “Justice” and an ultimate City of *Hubris* “Outrage.” When the elite of a city-state flourish excessively by behaving unjustly, they are warned by their poets, such as Theognis of Megara, that even a tyrant can become a “straightener” (*euthuntêr*) of their *hubris*.⁷

Kyrnos, this city is pregnant, and I fear that it will give birth to a man
 who will be a straightener [euthuntêr] of our base *hubris*.
 The citizens here are still moderate, but the leaders
 have veered so as to fall into debasement.
 Men who are noble, Kyrnos, have never yet ruined any city,
 but when the base decide to behave with *hubris*,
 and when they ruin the community and render judgments [dikai] in favor of
 things without justice [dikê]
 for the sake of profits and for the sake of power,

do not expect that city to be peaceful for long,
 not even if it is now in a state of much serenity,
 when the base decide on these things,
 namely, profits entailing public damage.
 From these things arise strife, internecine killings,
 and tyrants. May this city never decide to adopt these things!

Theognis 39–52

In this poetry, the social reformer is pictured as a tyrant. In the poetry of Solon, by contrast, the social reformer is the lawmaker himself, and it is this lawmaker of Athens who offers himself as a critic of the same kind of excessive flourishing, or *hubris*, on the part of the elite:

But the intent of the leaders of the community [*dêmos*] is without *dikê*.
 What awaits them is the suffering of many pains because of a great *hubris*.
 For they do not understand how to check insatiability [*koros*], nor can they
 make
order [*kosmos*] for their existing merriment in the serenity of the banquet.
 They are wealthy, swayed by deeds without *dikê*,
 and not caring at all about sacred or public property,
 they steal from one another by forcible seizure,
 and they do not heed the holy institutions of *Dikê*.
 who silently observes the present and the past,
 and who will in the future come to exact complete retribution.

Solon fr. 4.7–16

In the same poem of Solon, he personifies his own social reforms as *Eunomia* “good legislation,” a goddess whose effects are described as follows:

Eunomia reveals everything in good order [*kosmos*] and arrangement.
 She shackles those who are without *dikê*,
 She smoothes over what is rough, checks insatiability [*koros*], and blackens
hubris.
 She withers the sprouting blossoms of Derangement.
 She makes straight [*euthunô*] the judgments [*dikai*] that are crooked, and as for
 overweening deeds,
 she tames them.

Solon fr. 4.32–36

The old picture of the just king in his flourishing garden or cultivated field is a far cry from the Great Reformer’s new picture of a kingless state, but one thing remains a constant: *Dikê* continues in her straight ways, and she continues to flourish.

NOTES

1. All the translations of quoted Greek texts are mine.
2. By slowly but surely rebuilding his identity after he arrives in Ithaca, Odysseus in the *Odyssey* is shown to be reconstructing his kingship and thereby reconstituting society (Nagy1990a: 425–26).
3. *The Mahābhārata*, translated by J. A. B. van Buitenen (1975, 2: 363–64).
4. *Ibid.* (308–9).
5. G. Nagy (1990b: 70); quotation from Lévi (1898: 85).
6. Nagy (1990b: 63–70). For a different interpretation of justice in Hesiod, see Gagarin (1992).
7. For further analysis of the following passages from Theognis and Solon see Nagy (1985: especially 60–63); for more on Solon, see Anhalt (1993).

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Justice and the Metaphor of Medicine in Early Greek Thought

MARSHALL S. HURWITZ

The subject of justice (social and otherwise) appears prominently in that masterpiece of Greek literature, the *Republic* of Plato—a work which is a consummation of many intellectual motifs of early Greek thought. In the *Republic*, Socrates explains that in order to understand the idea of justice we must first understand what is meant by justice “writ large,” that is, before we can understand the abstract idea of justice, we must understand what justice means in society. In Books 2 and 3, Socrates explains how society arises, and he describes some of the component parts. In Book 4, he finally returns to the original quest of trying to define justice. Socrates makes a comparison with medicine; he says that “to produce health is to establish the elements in the body in the natural relation of dominating or being dominated (*kratein . . . krateisthai*) by one another, while to cause disease is to bring it about that one rules or is ruled (*archein . . . archesthai*) by the other contrary to nature. . . .” He continues, “Is it not likewise the production of justice . . . to establish its principals in the natural relation of controlling and being controlled by one another, while injustice is to cause the one to rule or be ruled contrary to nature?” (Plato, *Republic* 444cd). Two important points are expressed here: (1) what health is in the microcosm of man, justice is in the macrocosm of the state; (2) this health, as justice in the state, is conceived as a balance of forces. Both of these ideas are not new in Plato.

Greek medicine is well known for its “theory of humors,” which assumes that there are four liquids in our body (blood, phlegm, yellow bile, and black bile) that exist in a state of equilibrium in the healthy body, and that illness occurs when a state of disequilibrium between these liquids arises. This idea

already appears in the Hippocratic Corpus, in the essay on *Ancient Medicine*, a work ascribed to Hippocrates' son-in-law (Edelstein 1967). The motif of health as an equilibrium of forces and the implicit use of the metaphor of the state is found even earlier in a fragment of Alcmaeon of Croton, one of the immediate disciples of Pythagoras (according to Diogenes Laertius 8.5.83; see the discussion of the date in Guthrie 1962: 375ff.). It reads (Diehls and Kranz 1956: 24B4):

The essence of health is *isonomia* ("the equality of rights") of the forces (*dynameis*), wet-dry, cold-hot, bitter-sweet, etc.; but *monarchia* (the rule of one) causes disease, for the *monarchia* of one of the pair is deleterious. Disease occurs on account of an excess (*hyperbole*) of heat or cold, or on account of an abundance or deficiency of food; and in these things (it occurs): blood marrow or the brain. . . . Health is the symmetrical blending (*symmetron krasin*) of these qualities.

In this fragment we find an extended comparison between health and the state, and both are seen as a product of the competition of forces. What exists in the state ideally is a balance of rival claims of classes, private interests, ethnic groupings, etc. They have, in the course of time, reached an accommodation, a balance that makes for stability—that is, *isonomia* represents an equal claim to their assigned proportion. Any distortion upsets this delicate balance and creates disease. Moreover, as Gregory Vlastos has demonstrated in a classical article on the subject¹ (Vlastos 1953: 337–68) *isonomia* is a slogan of democracy; this social equilibrium is the ideal of a democratic state. It is all the more impressive that Alcmaeon, whose traditional date is at the end of the sixth century, a period still in the shadow of tyrannies in several Greek states, should equate illness with the political structure of a monarchy.

Not only do we find this metaphor in medicine, but we find an analogous idea in the physical speculation of the pre-Socratics. Hesiod in the sixth century B.C. had already distinguished between two kinds of *eris* (strife); one, the bad kind that leads to war; the other, the good *eris* (rivalry) that leads to productive competition (*Works and Days* 11–26). Heraclitus, at the end of the sixth century B.C., taught "that everything came into being by way of strife" (Aristotle, *Ethics* 1155b4, fr. 8 DK). "War is the father and king of all things," says Heraclitus (fr. 53). To quote Guthrie's summary (Guthrie 1981, 1: 440) "everywhere there are forces pulling both ways at once. Apparent harmony, rest and peace is in the real constitution of things (*physis*) a precarious equilibrium between these forces." Empedocles taught that the world was composed of four elements (earth, air, fire, and water). In addition to these elements there are two forces: love and hate that govern these elements. There is, as it were, alternations of tension and harmony just below the surface of things. These are some of the more obvious examples of this motif of the underlying tense equilibrium that exists in things. Nature, however, presents a picture of relative stability; the underlying tensions have reached some balance.

Hippocratic medicine conceives of the function of the doctor as one who aids nature. Nature does the healing, that is, restores the balance when it is upset. There is, so to speak, a self-regulating mechanism in nature that dislikes (to use an anthropomorphic term) any disequilibrium. The biological notion of homeostasis, although the term is based on Greek roots, was a discovery and coinage of the nineteenth-century biologist Claude Bernard but might well apply to this pattern of thought; just as the physiological system of higher animals tends to maintain internal stability when threatened by a disruptive stimulus, so too for Hippocratic medicine “nature” brings about a new equilibrium when disease has disrupted it. Heraclitus expresses a similar idea for physical nature in the fragment 226 where he says: “The sun will not overstep its measures; otherwise the Erinyes, ministers of justice, will find him out.” Justice is envisioned as the regulating force that does not allow a disequilibrium to persist.

The vocabulary of social justice repeats these motifs. The period of Greek literature that is replete with references to social injustices is the lyric age of Greece (seventh and sixth centuries B.C.). Not that other periods do not also refer to the wrongs which are rampant in society; but the centuries that produced Hesiod, Solon and Theognis are conspicuous in this concern for social issues. The products of the Attic-Boeotian-Megaran world of this period contrast sharply with the concerns of the earlier Ionian world and those of the later fifth-century Attic world. Was it a difference in the intensity of the social issues or of the awareness of these concerns? Was it like the manifestation of social concerns and the passionate reaction to them found among the prophets of ancient Israel at exactly the same period? Was there an age of social concern that preceded the Jaspers’ Axial age? Be that as it may, one epic poet from the seventh century and two lyric poets from the sixth century, all living within a 75-mile radius, give us an insight into how this metaphor pervades the social picture.

Excess is the cause of the injustice. As one quotation that is found both in Solon (5.9–10) and in Theognis (153–54) put it: “for *koros* (satiety) breeds *hybris* whenever much wealth / comes to the kind of man whose mind is not just right . . .” Or again in Theognis (605–6): “many more men than hunger *koros* has ruined before now, / men who were anxious to have more than their share to possess.” Theognis addresses his boyfriend Kynos (39–48) and tells him that the city is pregnant and will give birth to a man who will check the *hybris*. “There never was a city that good men destroyed; but when it pleases base men to act with *hybris* and they corrupt the people and give verdicts in favor of the lawless for the sake of their own gain and power, then you may expect that city to be at peace for long, not even if it lies in the deepest calm (equilibrium) now.”

The mention of corrupt judges brings to mind Hesiod who inveighs against them on the basis of his personal experience in a lawsuit with his brother Perses. He says to his brother (*Works and Days* 213–15): “Listen to justice, Perses, and do not practice *hybris*. *Hybris* is bad for a weak man, nor can the good man

bear it easily; he sinks beneath its weight.” *Hybris* is an illness that not only base men are susceptible to.

Solon boasts that his great accomplishment was to create an equilibrium between warring parties (fr. 5, transl. R. Lattimore):

I gave the people as much privilege as they have a right to; / I neither degraded them from rank nor gave them free hand; / and for those who already held the power and were envied for money / I worked it out that they should also have no cause for complaint. / I stood there holding my sturdy shield over both the parties; / I would not let either side win a victory that was wrong. . . .

Solon was not just impartial, but he reestablished the equilibrium that constitutes a just state. Furthermore, in another poem Solon says that it is not supernatural forces that will destroy our state, but the natural forces of *koros* (greed) that leads to *hybris* (fr. 3, transl. R. Lattimore):

This city of ours will never be destroyed by the planning of Zeus . . . / But the citizens themselves in their wildness are bent on destruction / of their great city, and money is the compulsive cause. The next stage / will be great suffering, recompense for their violent acts (*hybris*), / for they do not know enough to restrain their greed (*koros*) and apportion / orderly shares for all as if at a decorous feast

Solon’s language, the decorous feast, where all is apportioned in an orderly fashion is a fine poetic metaphor of the stable equilibrium.

Hybris (arrogance) distorts the balance; it is the product of excess (*koros*). Even the folk wisdom in proverbs warns us against disturbing the balance: *MEDEN AGAN* (nothing in excess), *GNOTHI SEAUTON* (know yourself—i.e., your limitations). An impersonal natural force requires us not to exceed the limits imposed on us by the gods. Herodotus in his History sees the defeat of Persia at the hands of the smaller Greece, not as a great nationalistic triumph or as evidence of the support of the gods, but as the impersonal natural force of *nemesis* that punishes national acts that go beyond the limit assigned to it, thus disrupting the precarious balance of nature.

The virtue in the individual that corresponds to this equilibrium in the state is *sophrosyne*. “Sound judgment” is realizing one’s limitations and not attempting to transcend it. Here, too, the medical model is frequent. As Helen North (1966) points out in her book on this subject, *Sophrosyne* is a companion of other personified values honored in the Dorian *ethos*: *Eusebeia* (reverence, piety) and *Eunomia* (good order) in Theognis (1135–50), *Hesychia* (quiet, stability) in Epicharmus (101 Kaibel); and then she adds that “*Hygeia*, health of body, is naturally and inevitably coupled with *sophrosyne*, health of soul. It supplies one of the most common metaphors for virtue in general in Plato’s dialogues. . . .” (North 1966: 95). Socrates in the “Charmides” dialogue tries to cure the young man of a headache by discovering his *sophrosyne*, and then he leads him on a

search for its meaning. This virtue, which is akin to the other virtue, *dikaïos*, is also frequently spoken of in medical terms.

Rather than call this a recurrent metaphor, we may look at it as a paradigm, one that pervades the intellectual life of a society at a given period, like the paradigm of the clock in eighteenth-century European thought, or like the paradigm of the living organism in nineteenth-century thought. According to this early Greek model there are competing forces in this universe that reach a state of equilibrium. Each man, thing, institution, and nation has its assigned portion (*moira*), and when it goes beyond the assigned portion, whether intentionally or not, it disrupts the stability. Natural forces reestablish an equilibrium. In medicine it is the dominance of one humor that causes disease; healing comes from nature with the doctor's help. In physics this explains natural law; if it were other than how it should be nature would be disrupted and must restore the balance. In politics it is the competing claims that reach an accommodation in the well-ordered (*eunomia*) state; when the existing arrangement is upset there is *stasis*, civil unrest. Most generally in man's affairs this stability is justice: injustice is a disequilibrium brought about by excess; just as in disease there are symptoms that persist until the balance is restored, so injustice may flourish until an equilibrium is achieved.

NOTE

1. I am greatly indebted to this article and two others by the late Professor Vlastos i.e., Vlastos (1946) and Vlastos (1947).

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Social Justice in Ancient Iran

FARHANG MEHR

Social justice, with definable features, has an indeterminate domain. Its main features received recognition even in antiquity. In general terms, social justice is associated in substance with human rights, political liberalism, and economic equity, and in form with the authority of the law and the due legal process. This chapter is concerned with social justice in ancient Iran. Ancient Iran refers to pre-Islamic Iran and a phase of Iranian history that ended by Arab invasion in the seventh century.

The key aspects of social justice were rooted in Zarathushtrian culture and Indo-Iranian tradition. Hence, Zarathushtrian literature, classical historical writings on Iran, and the stone inscriptions of ancient Iran provide the main sources for the present inquiry.

The essential features of social justice may conveniently be discussed under four headings: political justice, administration of justice, economic equity, and human rights.

POLITICAL JUSTICE

In his first sermon, Ashu Zarathushtra proclaims: (Irani 1924)

Hearken with your ears to these best counsels:
Gaze at these beams of fire and contemplate with your best judgment;
Let each man and woman choose his/her creed with that freedom
of choice which each must have at great events;

O ye, awake to these my announcements.

(Yasna 30–2)

From the “Cyrus Cylinder,” recovered in 1879 from the site of the Temple of Marduk at Babylon, we learn that the founder of the Achaemenian dynasty considered himself, and wished to be considered by others, a “righteous ruler” and a “liberator” rather than a conqueror; he who wanted to restore proper government to Babylon (Stronach 1978: 291).

Cyrus’ liberality and sense of political justice prompted him to restore all the gods of Sumer, Akkad, Gutu, Susa and Ashur to their original places (Stronach 1978: 292).

Several chapters in the Old Testament inform us that Cyrus (560–530 B.C.), who had conquered Babylon (539–537 B.C.) freed the Jews who had been held captive in Babylon and helped them to return to, and build a house of prayer, in Jerusalem. “The Lord, the God of Heaven, has given me all the Kingdoms of the Earth and he has appointed me to build a temple for him at Jerusalem in Judah. Anyone of his people among you—may his God be with him, and let him go up to Jerusalem in Judah and build the temple of the Lord, the God of Israel, the God who is in Jerusalem. And the people of any place where survivors may now be living are to provide him with silver and gold, with goods and livestock, and with freewill offerings for the temple of God in Jerusalem” (Ezra 1.2–4, 6.3–5).

Cyrus’ sanction of religious freedom for other peoples is recognized by the fact that he is called “my shepherd” (Isaiah 44.28), and is given the title of “anointed” (Isaiah 45.1) or Messiah in the Old Testament, and is ordered by Marduk, the great lord and protector of the Babylonians, who has seen Cyrus’ good deeds and upright behavior, to liberate the people of Babylon (Stronach 1978: 292).

This tradition of liberality continued during the reign of Darius the Great, who conquered Egypt in 517 B.C. and there paid reverence to the Egyptian Deities. He erected a temple to the god Ammon and financed the search for a new Apis (the sacred bull) in place of the one that had died just before Darius’ conquest of Egypt (Polyaenus VII, 11, 7).

This liberalism manifests itself in writings of the Sassanian Period (second to sixth centuries A.D.). The book of Mînô-I-Kharad (believed to have been written in the sixth century A.D.) mentions liberality as the first among thirty-three good causes of the good works of men (West 1871: 165).

During the Sassanian Rule, however, traditions of liberality gradually faded away. The reason was twofold: (1) the merging of politics and religion in Iran and the use of religion as a political tool against the dissidents and (2) the emergence of the Eastern Roman Empire as the protector of Christianity in the third century A.D. Iran and Rome were the two largest, contemporaneous neighboring empires involved in continuous wars for territorial expansion and political hegemony.

During the Sassanians, large numbers of Jews, Christians and Buddhists lived in Iran. “The adherents of foreign religions were able to live in peace, their organization and their religious laws were respected, so long as they did not set themselves against the authority of the state or conspire with its enemies. It was political reasons more than religious intolerance that brought about the first great persecution of Christians under Shapur II” (Christensen 1939: 122). Even toward innovators like Mani, intolerance started when Shapur I, against the wishes of the clergy, had shown sympathy toward the Manicheans.

“Liberalism” constituted an integral component of social justice in ancient Iran. Rationality (Holy Wisdom or “Vohu Mana”) is a thread that runs through the whole Gathas. “O, Mazda, from the beginning Thou didst create soul, body, mental power and knowledge; Thou didst bestow to mankind, the power to act, speak and guide (in order that) everyone should choose his or her own faith and path freely” (Yasna 31–11) (trans. Azargoshasb 1988).

Freedom of man and freedom of choice lie at the foundation of Zarathushtrian tradition—a freedom which should be exercised through wisdom and rationality, and in accordance with the Truth (the law of *Asha*). In the Gathic tradition, every individual using his faculties of Holy Wisdom and Truth, is entitled to question the legitimacy of law, even God’s law, until one is satisfied with its legitimacy. Rationality negates dogma. Legitimacy of dogmas may be challenged, as can the legitimacy of any edict issued by the civil authorities.

Liberality and rationality require “dialogue” and in the Gathas the dialogue between the all-powerful (omnipotent) Ahura Mazda, on the one side, and the soul of the Mother-Earth (*Geush Urvan*), the Holy Immortals (*Amesha Spenta*) of Wisdom (*Vohu Mana*) and Truth (*Asha*) on the other, is revealing. The scenario is set in Yasna 29 (trans. Taraporewalla 1951).

The soul of Mother-Earth complains to Ahura Mazda: “Wherefore did you fashion me? I am oppressed by fury, rapine, outrage, plunder, and violence which are prevalent. Except in Thee I have no protector. I supplicate Thee to reveal to me a savior (on earth) who could repel the evil and to guide me through my difficulties.”

Then Ahura Mazda initiates a series of consultations. First with Asha (Truth) whom He asks: “(In your opinion) who shall be the savior of the Mother-Earth and the people of the world—one who can keep at abeyance wrath and hatred, foster zeal, repel evil and protect the earth and righteous people.”

Asha, the Holy Immortal, after some reflection, responds: “Such a leader should be just and compassionate, free from cruelty, and strongest of mortals who can support the righteous against the wicked. Ahura Mazda best knows what Daevas and their followers have done in the past and what they would do in the future (should their activities remain unchecked).” Then Asha, somewhat apologetically, admitted that he did not know such a person; and yet, together with the soul of Mother-Earth, Asha praised Ahura Mazda and appealed to Him, with uplifted hand, to name such a person.

In a slightly admonishing tone, Ahura Mazda reminds Asha that he had been

assigned to regulate the progress of the world (and now he pleads ignorance). Next, Ahura Mazda turns to Vohu Mana, the highest Holy Immortal, and repeats his question. While Vohu Mana ponders over the matter, Ahura Mazda himself proclaims: "Such a person is well known to me. He is Zarathushtra, who has kept and carried out all our commands, and is eager to accept the mission and to preach the (hymns) of Mazda's Eternal Law. Therefore, sweetness of speech shall be granted to him."

At this juncture, the soul of Mother-Earth asks if Zarathushtra has the (physical) strength required for the job. However, she quickly remembers that Ahura Mazda knows best and that the job must be done not by force, but by reason, righteousness, and persuasion, for which purpose Zarathushtra will be granted strength of reason and sweetness of speech. Thus she declares her support and promises to help Zarathushtra succeed in his mission.

The dialogue reveals salient procedural rules in a just and democratic regime. The dialogue is between the rulers and the ruled. Consultation and a free, rational exchange of ideas are of essence in a just society.

On "the customs which the Persians observe," writes Herodotus "it is the general practice to deliberate upon affairs of weight when they are drunk (perhaps to eliminate inhibitions); and then on the morrow, when they are sober, the decision to which they came the night before is put before them again by the master of the house . . . ; and if it is then approved of, they can act on it; if not, they set it aside. Sometimes, however, they are sober at the first deliberation, but (then) reconsider the matter under the influence of wine" (Herodotus I, 133).

Before his expedition against Athens, Xerxes summons an assembly of the noblest Persians, to learn their opinions and to lay before them his own designs. Having informed the assembly of his plans, Xerxes wants the nobles to speak and addresses them in the following words: "I lay the business before you, and give you full leave to speak your minds upon it openly" (Herodotus VII, 8).

The form of government in ancient Iran was monarchical. Centuries of recorded history of ancient Iran had seen only four dynasties, except for a period of Hellenic rule. This indicates stability of the regimes based either on their legitimacy or on an efficient administration.

The kings enjoyed extensive authority, exercised with tolerance and justice by some and arbitrarily and in an oppressive manner by others. But this authority granted to the kings by Ahura Mazda had to be used for the peace, progress, and happiness of man. According to the religious literature, King Yima, the son of Vavanghavant, after a long and splendid reign, lost his throne because he chose vanity and ignored the protection of Mother-Earth and the welfare of the people (Yasna 48-5) (Taraporewalla 1951).

The Gathas instruct rulers and the ordinary people alike "to keep hatred far" from themselves (Yasna 48-7). In reference to the rulers blinded by pride and falsehood, Zarathushtra states: "Princes and Priests who like to yoke mankind to evil deeds, will destroy the true life" (Yasna 46-11). "The priests of falsehood never show regard for Ahura Mazda's commands and laws to love and

guard the Mother-Earth,” says Ashu Zarathushtra, who advises thus: “Let not bad rulers govern you” (Yasna 48–5). Undoubtedly, the religious teaching had a great influence on Achaemenians and Sassanians who considered their kingdoms entrusted to them by Ahura Mazda.

ADMINISTRATION OF JUSTICE

According to the Old Testament and Greek Classical writings, “Law” was supreme in ancient Iran. “Now, O King, establish the decree, and sign the writing, that it be not changed according to the law of the Medes and Persians, which altereth not” states the Old Testament. Then, “These men assembled, and said unto the King, know, O King, that the law of the Medes and Persians is that no decrees nor statute which the King established may be changed” (Esther 1.19).

In ancient Iran, even as early as in the fifth century B.C., the laws were published so that everybody would know what the laws were and no law would have a retrospective effect. “And when the King’s decree shall be published throughout all the empire, everybody great and small will know and act upon it” (Esther 1.20). “If it please the King, let there go a royal commandment from him, and let it be written among the law of Persians and the Medes that it be not altered” (Esther 1.19) nor would anybody violate it through plea of ignorance.

Strict rules governed the administration of justice. During the administration of the Achaemenians, the royal judges “held their offices for life, or until they were found guilty of some misconduct” (Herodotus III, 3). The judges tenure of office guaranteed their independence from the executive. In Iran, “Justice is administered, and (the laws) are interpreted, and all disputes (are) referred to the (judges)” (Herodotus III, 3).

There is ample evidence that the administration of justice had reached juridical sophistication with vertically stratified courts—courts of first instance and appeal, services of defense lawyers, and well-defined procedural rules that guaranteed fair trials.

Nonetheless, there are indications that under autocratic kings, the rules of law were sometimes ignored. Herodotus narrates a story about King Cambyses that implies in the normal time even the kings would follow the law of the land. However, in the case of a ruthless, mad, and despotic ruler, the royal judges would find a way to escape the ruler’s ravage without endorsing violation of law. Herodotus writes: “It was not the custom of the Persians, to marry their sisters—but Cambyses, wishing to marry his sister, called together the royal judges and asked them whether there was any law which allowed a brother, if he wished, to marry his sister. The judges gave him an answer which was at once true and safe. The answer given by the judges was that ‘They had not found any law allowing a brother to take his sister to wife, but they found a law, the king of the Persians might do whatever he pleased’ ” (Herodotus III,

31). In other words they suggested that the king stands above the law. This, at least, during the administration of the Achaemenians was rare. In the above-mentioned case, Cambyses followed the prevailing rule among Pharaohs, after the conquest of Egypt.

“Darius, like Hammurabi, laid special weight on the rules for evidence . . . and insisted on the incorruptibility of the royal judges” (Olmstead 1948: 129). The official who administered the law (*dat*) was called Iahudanu and was charged with the task of insuring the exactness and accuracy of the applied law. The crimes against the state, the person of the king and his family, and often the king’s property, were very severe and usually punishable by death (Olmstead 1948: 130). Herodotus narrates the story of Pychius, whose eldest son’s life was forfeited for a presumed act of disloyalty toward the king. The king ordered the murder of Pychius’ son by cutting his body asunder and placing the two halves on the two sides of the exit to the great road so that the army might march out between them. Such was the severity or exemplary nature of the real or perceived crime against the king and state.

A. T. Olmstead writes “To the end of his life, Darius continued to express his pride in his ordinance of Good Regulations.” His reputation as lawgiver whose laws had preserved the Persian Empire, was attested by Plato (Epistle vii, 332B). Darius’ laws were applied by the Seleucid rulers as authoritative law (Olmstead 1948: 130).

Under the Sassanids the administration of justice reached a high degree of sophistication at the horizontal and vertical levels. At the horizontal level the courts were divided into Ecclesiastical and Temporal Courts (Bulsara 1937). The Ecclesiastical Courts (*Dahyopatan*) entertained the crimes against the church covering charges of heresy, apostacy, atheism and other like matters; Temporal courts (*Dat-gehan*) adjudicated crimes against the state and the civil litigations (Bulsara 1937: Ch. XL, 11). The king was nominally the highest judicial authority, though in reality the clergy had the upper hand in judicial matters (Bulsara 1937: Ch. XLII, 22, 47).

The vertical stratification of the courts was in Courts of First Instance and Appeal, and the final decision lay with the king, who was functioning as the supreme court individually or in council. The accused persons were defended by the civil lawyers in the Temporal Courts and by the clergy in the Ecclesiastical Courts. The rules of procedure were well defined (Bulsara 1937: Ch. XXVII).

In the ecclesiastical matters or litigations, the king could not intervene, for such matters fell under “the supreme authority” of the Grand Master of Divinity (*Magopatan Magopat*) (Bulsara 1937: Ch. XL, 10, 11).

There are indications that matters of personal law (marriage, divorce, inheritance, adoption) and the proprietary rights of marriage, fell within the jurisdiction of the Ecclesiastical Courts (Bulsara 1937: Ch. XL, 6).

The priests (Magis) under the mantle of religion exercised intensive power over the religious and civil lives of the people. Not only did the priests share

sovereignty with the civil government, but they also possessed proprietary rights over temple endowments, lands, and the incomes accrued therefrom. They functioned as educators, judges, and priests. When an offense was classified as antireligion, the accused was doomed.

In the civil courts, the administration of justice was humane. The erudite civil judges were well versed in law and had good reputations. *Matikan-e-Hazar Datastan* enlists specific rules with regard to the arrest of the perpetrators, determination of his/her correct identification, the nature and circumstances of the crime, evidence to be adduced, deposition, and expert's opinion (Bulsara 1937: Ch. XL, 1, 2).

As an illustration, the book mentions the case of a person being arrested and charged with theft. The arresting police had to act according to the orders of the judge and recognized procedure; the police must have identified the person, must have recognized the stolen article, and must have sufficient proof that the article was indeed stolen (and not to have come to the possession of the accused in some other way) (Bulsara 1937: Ch. XL, 13).

ECONOMIC EQUITY

Our knowledge about the state of the economy during the Median dynasty is scanty. In a tribal and extended family setup, economic needs and the welfare of the individuals, family, clan, and tribe are looked after by the elders. Herodotus informs us that "Deioces collected the Medes into a nation. . . . These are the tribes of which they consisted: the Busae, the Paretaceni, the Struchates, the Arizanti, the Budii and the Magi" (Herodotus I, 101). Except for Magi, no information is available on the other tribes. Magi were the religious sect that attended to the socioreligious affairs of the nation. They enjoyed a great power and exerted influence on the princes and rulers—and, as such, enjoyed privileges. The Gathas reproaches the *Karapans* (priests) and princes who dupe and exploit people and become burdensome (Taraporewalla 1951: 48–10). The princes and *Karapans* kept their sway over the people and carried out their own ill-intentioned plans. We do not know whether other tribes too performed specific functions to the exclusion of others in the nation. According to Herodotus "the Medes at that time dwelt in scattered villages, throughout the land" (Histories I, 91). When Deioces was elected king, he ordered a magnificent palace to be built, and dwelling houses were constructed outside the circuit of the palace walls. Thus, a large town emerged. The cost was paid by freemen as a voluntary contribution.

We do not find any allusion to the use of coined money during the administration of the Medes. However, from Yashts (*Avesta*) and Ferdaussi's *Shah-Nameh* we can conclude that gold, silver, and precious stones were used for ornaments, crowns, jewelry, settees, and other utensils.

With regard to Achamenians, basic information may be gathered from Babylonian business documents, Egyptian papyri, the Bible, Greek sources, and Persian inscriptions (Olmstead 1930: 232–38).

Before the conquest of Elam and Babylonia by Cyrus and contact with older civilizations, the Persian societal structure was tribal, the nucleus of which was the family residing in a house (*nmâna*). Several families formed a clan (*taumâ*) living in a village (*vis*), and several clans formed a tribe (*zantu*) living in a town (*shathra*) or in an extended town (*dainhu*). The chiefs of clans and tribes were elected and enjoyed legitimacy of position.

This societal structure is evidenced by Darius' inscription at Nagsh-i-Rustam that reads: "I, Darius, the Great King, the son of Vishtasp (family), a Parsi (clan), of Aryan (tribe)." After contact with Assyrian and Babylonian tribes, the governmental administration of the Achaemenians became more centralized while the tribal structure continued, with loyalties to family, clan, and tribe. The king and central government were mainly responsible for the defense of the country during war between the tribes, and for maintenance of order while peace between the tribes reigned.

The economy of the country was essentially agricultural. Farming in the plains by sedentary people with the use of highly skilled irrigation systems through Qanats, herd raising by nomads in the mountainous pastures, hand-crafting, pottery making, and the constructing of clay houses, and primitive barter trade formed the main economic pursuits of the people. The emphasis on farming and agriculture in Zarathushtrian literature is striking: "(He) who intensively sows corn, (plants) fruit bearing trees; (He) who makes full use of water for cultivation; (He) who increases the amount of water on the earth . . . sows piety; (He) who does not (sow), does not eat and (He) who does not eat cannot work, and (He) who does not work (cannot become) holy" (Anklesaria 1949: 43).

Through interaction with conquered nations, Iranians learned administrative bookkeeping from Babylonians and the cuneiform alphabet from the Elamites (Olmstead 1948: 68–86).

One of the main economic developments of this period was the introduction of coin money. From the tablets in the revenue archives of Kudra Kaka and Huhantash, the Elamite subjects of Persia, we learn that after the adoption of the monetary system, a class of private bankers emerged, who gave loans to individuals without mentioning the interest rate. However, the accrual of interest is evident from the fact that in one of the tablets it is mentioned that in case of failure to pay back the loan installments on time, the interest shall increase (Olmstead 1948: 69). Most probably the banking operations were done mainly by Elamite subjects of Persia.

It seems that "the Elamite bankers were acquainted with the same tricks employed by their fellow bankers in Babylonia; on the inner tablet the six gold shekels are lent at the unusually favorable rate of one pound of silver, that is the ratio of ten to one; but on the envelope (the only part available for inspection unless it were broken in the presence of the judge), the loan is discounted one gold shekel, the more usual twelve-to-one ratio" (Olmstead 1948: 69).

The Persians probably would not engage themselves in such dishonorable

practices. Herodotus writes of the Persians of that period, "They hold it unlawful to talk of anything which it is unlawful to do. The most disgraceful thing in the world, they (Persians) think, is to tell a lie; the next worse, to own a debt; because among other reasons, the debtor is obliged to tell lies" (Herodotus I, 139). Honoring the promise was both a religious and a legal duty. In the *Avesta*, the chapter of Mehr Yasht is replete with statements confirming the sanctity of contracts. The Yazata (Angel) Mithra is the genius of the sanctity of contract and the foe of falsehood. He conducts the divine struggle against evil and chastises those in breach of promise (Mehr 1991: 35).

In Vendidad the breaker of a promise is labeled "the thief of promise" (Anklesaria 1949: IV, I). The contract could have been made orally by word of mouth or in writing. The contracting parties could fix the damages for breach in advance, which would have been an animal (e.g., a sheep, horse, camel), or a slave, or a piece of real property (e.g., a house or a plot of land).

The tablets in the archives of Kudka Kala inform us that the gifts offered to the king by the satrapies or subjects were both in money and in kind. Textile and garments, bows and arrows, spears and shields, are all mentioned among other items in the list of the king's revenue (Olmstead 1948: 70).

Again, the inscriptions on the tablet show that some merchants dealt in loan of seed, food, precious metals and stones. Sale or lease of a house or farm are mentioned as the subject matter of transactions and contracts. The proprietary right had acquired importance. Title deeds were used and animals were branded for ascertainment of ownership. According to Herodotus, Cyrus and Cambyses collected no tax and no formal tribute (Herodotus III 8, 9). Instead, the subject peoples would offer gifts. It was Darius who imposed a tax, fixed tributes, and dues.

The economic regime was overhauled in 503 to 502 B.C. by Darius, the great lawgiver and administrator. Amongst his economic measures were a standardized system of weights and measures (in a new addition to the weights used by Babylonians, he introduced the new weight "karsha"), a new monetary coinage, "Doric" standardization of the values of precious metals, and a new tax law. However, most traders continued the barter practice, and the monetary terminology was used in bookkeeping documents.

Darius divided his territory into twenty provinces (or states) "of the kind which the Persians call satrapies." He assigned a governor for each province and fixed the tributes that were to be paid to him by the several nations. The following is an account of these governments and of the yearly tribute that they paid to the king. "Such as brought their tribute in silver were ordered to pay according to the Babylonian talent; while the Euboic was the standard measure for such as brought gold." Herodotus states: "Cyrus was gentle and poured them all manner of goods,—Cambyses was harsh and reckless,—Darius looked to making gain in everything" (Herodotus III, 89–91).

In the *Vendidad*, different rewards in kind are set for physicians. The professional fee varied according to the social status of the patients. Those who had

a higher social status and income paid more. This reflects the concept of economic equity in those days (Anklesaria 1949: vii, 41–43).

“A stray tablet from the treasury of Darius, vividly illustrates the drastic character of the revaluation and suggests the injustice which the tax payer occasionally might have suffered in the process,” writes Olmstead (1948: 189). The story runs like this. In the nineteenth and twentieth years of Darius’ reign, some coins with less than normal purity had been minted and placed in circulation. When the taxpayers used them in discharge of their tax obligations, the treasury would accept them at a discount and not at the face value. This was unjust and caused hardships to the taxpayers. Despite realization of the fact that inferior coinages were in circulation, the government had not collected and placed those coins out of circulation (Olmstead 1948: 190). The discount was sometimes up to one-eighth of the face value of the coins.

During Darius’ reign, trade became more sophisticated, and government regulatory measures increased. The population became socially stratified; the tribes and clans were more integrated into the nation. National identity and loyalty were gradually replacing the tribal loyalty. Trade expanded, and the merchants and money lenders were the main profit makers. Some pursuits became family concerns, passing from father to son. The names that appear on the tablets reveal that many Jews and Babylonians were engaged in business and money lending (Olmstead 1948: 192).

Very little is documented on the state of economy during the administration of the Parthians (250 B.C.–A.D. 226). However, the coins minted with the names of the Parthian kings on them and found in Asia Minor indicate a thriving trade at that time.

Under the Parthians, the tribal system revived and the central government was weakened. Decentralization increased with the growth of feudalism.

Unlike Achaemenian policy, with a permanent army under the superior command of the king, the Parthians forced their subjects to take arms when needed. They also used mercenaries.

Most important decisions were adopted in the Council of the Chiefs of Tribes, big feudals, the tyul holders and notables and the influential members of the king’s family. The assignment of ludicrous positions to the officials and the election of the successor to the king were among the functions of the council. The high positions in the government were not hereditary. Rivalry and clashes between tribes were rampant.

We know a great deal about the socioeconomic conditions during the administration of the Sassanians (A.D. 226–430). During the era the main sources of income were land tax (*Xarag*) and personal tax (*Gazyat*). As previously mentioned in Zarathushtrian literature and Persian tradition, agriculture is a divine and noble pursuit. With the extensive arid lands and shortage of rainfall in Iran, agriculture depended on an expensive and sophisticated system of irrigation through Qanat. The land tax was “from a sixth to a third according to the fertility of the soil,” and it was based on an assessment of the crops of each

farm by the government officials (Christensen 1939: 109–37). Personal tax “was fixed at a yearly sum which was divided out among the taxpayers by the authority” (Christensen 1939: 109–37).

A legacy from the Parthians, as well as the Sassanians, was that the farmers functioned as foot soldiers during the war. The town dwellers paid only the personal tax and were normally exempt from military service unless they were in the professional army or volunteered for the service. King Khosrow I (A.D. 531–579) revised the personal law exempting individuals younger than twenty and older than fifty from the personal tax. Also, members of the royal family, nobility, priesthood, and military became exempt from personal tax. Thus, the financial burden of the farmers was increased. The rate of personal tax varied between four to twelve Darham per person according to the income of the individual concerned. Once a person passed away, all of his or her tax in arrears would be written off. In addition to the two above-mentioned taxes, those who received the king’s audience during the national festivities presented gifts to him. The spoils of the war too went to the treasury.

It was customary for the newly ascended king to relinquish all the uncollected and unpaid taxes. It was a gesture of grace to the subjects. The main expenditure of the government consisted of the wages of the civil servants, army, office expenses, the cost of the infrastructure (works such as construction of dams, roads and schools), welfare and upkeep of the poor, as well as the financing of war.

During the Sassanian administration, the city of Ctesiphon, the capital of the empire, was a crossroads for international trade, a meeting place for caravans that “came from the west through Edessa and Nisibus, India by the Cabul Valley, China along the Tarim basin, and Turkestan through Rhagae” (Christensen 1939: 117). In Iran the Chinese brought carpets from Babylon, precious stones from Syria, and textiles from Syria and Egypt (Christensen 1939: 118). During the Achaemenian rule many skilled craftsmen from foreign lands worked on the construction of palaces, dams, roads, and were even engaged in trade.

The study of records and the analysis of the inscriptions on tablets unearthed in the 1930s reveal the observance of economic justice toward foreign workers. The “Treasury Tablets” belonging to 492–460 B.C. give us impressive information about the egalitarian treatment of Iranians and foreigners who were engaged in the construction of Persepolis in Fars. The inscriptions on the tablets disclose that no slaves and no forced labor had been used in the building of the place. It seems that prisoners of war were not enslaved during the Achaemenian administration, though the situation changed during the Sassanian rule when the great dam at Shoshtar was built by Roman prisoners of war after the defeat of Valerian’s army by Shapur I. The following are excerpts from some tablets.

The treasurer is informed that: three karsha, two and a half shekels of silver should be given to an Egyptian woodworker named Harandhama who is a wage earner at Persepolis. The sum is paid for services performed during five (5) months (eighth to the twelfth month of the thirty-second year of Darius’ reign);

by specific order of Darius, the sizable amount of 904 karsha of silver (perhaps equivalent to \$9,000 in 1939) is here given to herdsmen of Parmizsa; 165 karsha of silver are here awarded for the maintenance of the women of the horses; 530 karsha of silver are distributed in varying amounts to thirteen (13) specific individuals, the majority of whom are Persians; eight (8) karsha and ishekeb of silver are paid to workmen of Egypt and Syria. Sometimes the money is paid in silver coins or part of it in kind. The fact remains that they were paid for their services (Cameron 1948: 83–93).

Economic equity was also achieved through charity; a time honored tradition observed by Parsis of India and Zartushtis of Iran that is still practiced today. In Zarathushtrian literature, Charity (*Rata*) is greatly praised. The last sentence of the Yatha Ahu Vairyo prayers says “that man who helps his fellow beings develops moral courage.” In ancient Iran during the year, six festivals of five days each (called *Gahanbar*) were observed. Even today the Zartushtis of Iran faithfully celebrate those feasts. The feasts are religio-social in nature and correspond to the time of sowing or harvesting crops, which were performed by mutual aid. “The festivals were of great significance to an agricultural community and if anyone avoided giving his share of a helping hand he was looked down upon” (Sethna 1978: 152). Another objective was to provide collective help for the poor and needy.

The kings in the festivals of NoRooz and Mehrgan (the beginning of spring and autumn) gave public audience for several days, and help was given to the needy and poor.

In religious literature, *Rata* (the Guardian of Charity) is the companion of *Spenta Armaiti*, the angel Guardian of Mother-Earth. In the *Vendidad* it is stated that when a coreligionist or friend goes to a person for financial assistance, he or she must be helped (Anklesaria 1949: 4, 44). A Zoroastrian prays that the spirit of Charity of the religious devotee may drive away the demon of stinginess.

HUMAN RIGHTS

“Human rights” is an illusive concept of modern coinage. It has its origin in the writings of social scientists of the eighteenth and nineteenth century who opposed the arbitrary rule of the kings and advocated freedom of conscience, thought, speech, assembly, and the dignity of man. The concept has been subjected to much scrutiny and has finally been incorporated into the United Nations Charter of Human Rights, to which all UN members have become signatories.

In the meantime, the origin of human rights had been ascribed to national and religious laws in order to enhance the validity and legitimacy of the concept. Notwithstanding the undefinability of the domain of the subject matter, certain general principles lie at the core of the concept, which we glanced through in connection with social justice in ancient Iran.

Slavery existed in the ancient world, and is acknowledged in most religions

with disapproval. There is no word for “slavery” in Zarathushtrian holy scripture; nor does the existence of slavery appear in Iranian mythology and tradition. But cases are mentioned in the classical writings concerning enslaved, defeated nations. In the war against the Ionians, the Persians addressed them in these words: “If (you) submit, no harm shall happen to (you) on account of (your) rebellion. (Your) temples shall not be burnt, nor any of (your) private buildings. . . . But if (you) refuse to yield, and determine the chance of a battle, . . . when (you) are vanquished in the fight, (you) shall be *enslaved*; (your) boys shall be made eunuchs, and (your) maidens transported to Bactra” (Herodotus VI, 9).

On this basis, “Bartholamae and West (have) concluded that slaves were imported from foreign countries or were captured” (Bulsara 1937: 72), and Bulsara infers that there was no indigenous slave in Iran. This practice must have continued even after the Achaemenians.

In several places in the collection of the laws of the Sassanian period (*Matikan-e-Hazar Datastan*), allusions have been made to the law governing the ownership and treatment of slaves.

Certain principles may be formulated from such laws relating to specific cases. The slaves were captured foreigners who were non-Zoroastrians. The ownership of the slave belonged to the man (Bulsara 1937: IV). The owner had to treat the slave humanely; violence and tyranny toward the slave was forbidden. In particular, the beating of a slave woman would be considered a crime (Bulsara 1937: IV). When a non-Zoroastrian slave, such as a Christian slave, embraced Zoroastrianism, he or she could pay his or her slave price and become free. When a Christian (non-Zoroastrian) slave converted into Zoroastrianism by marrying a Zoroastrian, the matrimonial partner had to pay the price of the slave to the owner and free the slave. Whoever sold a slave to a non-Zoroastrian committed a crime; both the vendor and the purchaser were subject to punishment.

If a slave together with his or her foreign master embraced Zoroastrianism, he or she remained enslaved, when the master pledged the services of the slave to a third party, the master was entitled to receive the wage or reward that accrued to the slave (Bulsara 1937: XXI). If, however, the third party, in addition to the wage, paid some money as a gift to the slave, the latter was entitled to keep it (Bulsara 1937: XXXV) and use it in a later stage to purchase his or her freedom from the master (Bulsara 1937: XXI).

To free a slave (irrespective of his or her faith) was a good deed. Besides the right to keep the gifts given to them, the slaves were entitled to at least three days of rest in a month (Bulsara 1937: IV). If the ownership of a slave lay with more than one person—say, three persons, or two persons with unequal rights—once the majority owner (or owners) freed the slave, the slave was completely free. The law protected the slave (Bulsara 1937: XXXII). Nobody “may inflict upon his own slaves a fatal punishment for a single crime. . . . Not even the king himself may slay anyone on account of one crime” (Olmstead 1948: 68–86).

Equality of men and women, Iranian or non-Iranian, is apparent in the Gathas,

where Zarathushtra addresses man (*Nar*) and woman (*Nairi*) on the same footing. Zarathushtra also blesses Frayana, a Turanian along with his Iranian disciples.

Egalitarianism is the bedrock of the ancient Iranian religion and the Achaemenian tradition. The mother and the wife of the king not only participated in the official ceremonies, but they also wore crowns and the mother took precedence over the king (Rapp 1878: 106). The women took part in public functions according to Plutarch.

Persians condemned collective punishment and lynching. Comparing justice and retaliation in Greece and Persia, Herodotus writes, “The Persians consider that Greeks were to blame for ‘collective retaliation’ and the injuries on either side (caused by) common violence” (Herodotus I, 4).

After the Spartans murdered the official emissaries of Persia sent to Sparta, some Spartans were sent to the Court of Persia, where receiving an audience with the king, they declared, “O, king, the Lacedaemonians have sent us hither, in the place of those heralds of yours who were slain in Sparta, to make atonement to you on their account”; but Xerxes, the king of Persia, answered with true greatness of the soul that he “would not act like the Lacedaemonians, who by killing the heralds, have broken the laws which all men hold in common” (i.e., the international law). He continued, “As I have blamed such conduct in them, I would never be guilty of it myself” (Herodotus VII, 136). This shows the moral dimension of the ancient Persian law.

In Sassanian Iran, the society rested on three pillars: the monarchy, the Zoroastrian clergy, and the aristocracy—all of whom collaborated with, or vied against, each other, depending on the strength or weakness of the central government. In that society several foreign religious communities existed: Jews, Christians, and Buddhists were the largest ones.

Among these groups Christians were suppressed, not so much for their faith as for their political leanings. In the religious literature people were divided into clergy (*Athrava*), military (*Rathaishta*), farmers (*Vastruyufshyun*), and craftsmen (*Huviti*). The division was horizontal, not vertical. No special privileges were assigned to these groups. During the Sassanian rule this horizontal grouping was modified and transformed into a vertical hierarchy with special rights and privileges. Transfer from one class to another was difficult, if not impossible. Consequently, Achaemenian social justice was replaced by social discrimination and inequality that contributed to the collapse of the Sassanian dynasty and the Arab conquest in Iran.

The surveys of social justice reveal that its essential features were deeply rooted in ancient Iranian tradition and religious beliefs. These features were observed through political legitimacy, religious tolerance, economic equity, and application of a strictly implemented rule of law. Achaemenians (560–330 B.C.) expressed pride in their laws, incorruptability of their judges, fair economic practices, and equal treatment of Iranians and non-Iranians in matters of wage and financial benefits related to services rendered.

During the Sassanians rule (A.D. 226–430), several features of social justice—

particularly religious tolerance—were eroded because of internal (religion and aristocratic rule) and external (expansion of Christianity and a long-standing Irano-Roman war) forces. Nevertheless, the supremacy of law continued, though often interpreted by and enforced in favor of the ruling classes.

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Social Justice in Ancient India: In *Arthaśāstra*

M. G. PRASAD

INTRODUCTION

The discussion of dharma, the basic theme of the Vedas, has influenced the life, literature, and culture of India. In particular, the epics *Ramayana* and *Mahabharata* written in the Sanskrit language, essentially express the theme of *dharma* through the personalities of Rama and Krishna, respectively. Although it is very difficult to define exactly the term *dharma*, it comprises laws of life, nature, and cosmos. In individual and social life, dharma is the system of rules for deciding between right and wrong. These rules touch on all aspects of decision making, including ideas, intentions, thoughts, speech, action, reaction, situation, effects and much more. In its fundamental nature, dharma is referred to as “*sanatana* dharma.” This means that the dharma, or frame of reference, for values and laws has to be eternal (*sanatana* in Sanskrit) in its essence and universality. Based on (sanatana) dharma, at different times many codes of laws were formulated by philosophical authors, such as Narada, Yagnavalkya, and Manu (Rapson 1955, 1: 247–63).

The concept of social justice is very much part of sanatana dharma, because in ancient India the mode of government was monarchic, so that the dharma for the king included social justice as a major duty. It is in this monarchic context that social justice is addressed in many literary and philosophical works of ancient India on sanatana dharma. In this chapter, social justice in ancient India is discussed with particular reference to *Arthaśāstra* written by Kautilya, also known as Chanakya or Visnugupta. This has been a pivotal work in understanding ancient India’s systems of administration, law, and justice against the back-

ground of sanatana dharma. The *Arthaśāstra* has also been highly regarded by several modern eminent scholars as a major source of reference belonging to ancient India. It is said that Kautilya used the *Arthaśāstra* as a manual in showing how to balance the two sides of life: the mundane (materialistic) and the transcendental (spiritual) (Rangapriya 1983, 2: 205–11).

The relevance of the Vedas to the human life is in terms of the fourfold objectives of life: *dharma*, *artha*, *kama*, and *moksha*. The objective of *dharma* is to become aware and to learn how to choose between right and wrong. Then comes *artha*, which has as its objective the acquisition of wealth and the proper use of it. *Kama* concerns natural and rightful desires' and *moksha* concerns the state of spiritual contentment and realization of the self. The above order of fourfold objectives is important, and dharma and moksha mark the boundaries within which artha and kama have to be fulfilled. The objective of acquisition of wealth in reference to the society ruled by monarchy is dealt with in the *Arthaśāstra* (Kangle 1992, 2: 1–5).

ANCIENT INDIA: MAURYAN EMPIRE

The advent of the Mauryan empire is a unique event in the history of ancient India. With the coming of Chandragupta Maurya around 382 B.C., the Mauryan empire receives more definite chronology (Mahajan 1960). Men like Megasthenes and Daimachus lived at the Mauryan capital, Pataliputra. The Indika of Megasthenes describes the wealth and prosperity of the state. The description of government is also provided in some detail. It is also mentioned that Chandragupta Maurya is one of the greatest personalities of ancient India (Gokhale 1956: 4).

It is said that Chandragupta Maurya was brought to power by the scholar and philosopher Kautilya, who later became Chandragupta's minister. In the pre-Mauryan Nanda period, the scholar Kautilya went to then-King Dhanananda for recognition of scholarship, but Kautilya was insulted instead. Kautilya, stung by the insult, took a vow to dethrone Dhanananda and left the capital. On his way back home, he found young Chandragupta playing in the woods. Kautilya took Chandragupta along with him and trained him in the arts of war and government. Later, Chandragupta formed an army and, with the help of Kautilya, won the throne of Magadha by killing Dhanananda (Gokhale 1956: 34–35).

Chandragupta was the first historical emperor of India. A brilliant description of the life of Chandragupta is given by Megasthenes (Gokhale 1956: 35–36). The emperor spent most of his time supervising the administration of his vast territory. As supreme judge he heard cases in the imperial court during the whole day without interruption. The palace was open to all, and the king kept himself informed on all subjects of interest to his people. Elaborate precautions were taken to guard the emperor. The posting of female guards was a prominent

feature of the court life. He rarely slept during the daytime, and according to some accounts, the emperor never slept in the same bedroom two consecutive nights. The public appearances of the emperor were occasions of great pomp and splendor.

The administration of the capital city was entrusted to thirty dignitaries who served on six boards. Each board had a specific charge: Board I looked after industrial arts; Board II attended the needs of the foreigners; Board III recorded vital statistics; Board IV took charge of trade and commerce; Board V supervised the selling of manufactured articles (new and old, separately) by public notice; and Board VI collected titles on sale (and any fraud in payment of this tax was punishable by death). These were the separate functions by which the boards discharged their responsibilities. In their collective capacity they had charge of matters affecting general public interest, such as keeping public buildings in proper repair, regulating prices, taking care of markets, harbors, and temples. Generally, the people in this period of the Mauryan empire enjoyed a high reputation of honesty, and cases of thefts were exceedingly few. It is not surprising that homes were left unguarded and that litigation was seldom resorted to. In addition, an efficient police and penal system contributed to a comparative absence of theft (Gokhale 1956: 38).

The administration of the vast imperial state encountered complex problems of polity. These problems were courageously faced and wisely solved by Chandragupta with the help of his friend, guide, and philosopher Kautilya, who served as constant counselor. Kautilya is reputed to be the author of the *Arthasāstra*, the celebrated work on polity. The Mauryan administration, under the able leadership of Chandragupta and Kautilya, maintained a delicate balance between a centralization of power and a decentralization of authority over the various levels of a state bureaucratic machine. The empire was divided into provinces of the royal family. The provinces were further divided into districts, and the smallest unit of administration was the immemorial Indian village in the charge of a village headman who collected revenue and maintained law and order on behalf of the king. In order to maintain close contact between the king and his officers, on the one hand, and the king and the people, on the other, extensive use of reporters, agents, and spies was made. These observers and information agents operated all over the empire, closely watching the officers and keeping the king well informed about the people.

This efficient and fair administration that brought justice and happiness to people is widely attributed to Kautilya who has laid out the science of polity in his manual *Arthasāstra*. We will now take a close look at this work.

ARTHAŚĀSTRA: SCIENCE OF POLITY

At the end of his monumental treatise *Arthasāstra*, Kautilya reflects on the science of polity and on his reason for writing the treatise:

Thus this science (of polity), expounded with devices of science, has been composed for the acquisition and protection of this world and the next (15.1.71).

This science brings into being and preserves spiritual good, material well being and pleasures and destroys spiritual evil, material loss and hatred (15.1.72).

This science has been composed by him [refers to Kautilya], who in resentment, quickly regenerated the science and the weapon and the earth that was under the control of Nanda Kings (15.1.73) (Kangle 1992, 2: 516).

Kautilya's work deals with such diverse subjects as accounts, coinage, commerce, forests, armies, and navies. Kautilya also discusses the rules of administration, selection of ministers, principles of taxation, economic development of the country, and the maintenance of discipline in the army.

Though Kautilya devotes a section of his work to republic states, he prefers monarchical government. He suggests that the state is established by the weak as a protection against the strong. The king should be vigilant about the well-being of his subjects. "In the happiness of the subjects lies the happiness of the king; in their welfare, his own welfare; his own pleasure is not good, but the pleasure of his subjects is his good" (Radhakrishnan and Moore 1973: 243).

A strikingly original feature of the state administration in Kautilya's work is its policy of promotion of public health. This involved a ban on unwholesome food and drink, a strict control over physicians in the interest of patients, as well as state provision for medical treatment of victims of diseases and epidemics. Another notable characteristic of the administration is illustrated by the measures for protecting the public against the dealings of artisans and tradespeople (Chopra 1973, 2: 113).

Arthaśāstra is a manual of guidelines and laws for enforcement for kings and administrators. The treatise is remarkable for its elaborate and detailed consideration of the diverse aspects of statecraft. It contains fifteen *adhikaranas* (or "books"). The first five deal with the internal administration (or *tantra*) of the state, the next eight deal with foreign relations (or *avapa*) with neighboring states, while the last two are miscellaneous in subject matter. The topics dealt with in the fifteen books are:

- 1 Training for administrators
2. Activities of heads of departments
3. Judges
4. Suppression of criminals
5. Secret conduct
6. Circle of kings
7. Six measures of foreign policy
8. Calamities of state
9. Activity of a king about to attack
10. War

11. Policy toward obligarchies
12. The weaker king
13. Means of taking a fort
14. Secret practices
15. Method of scientific analysis (regarding politics)

Regarding social justice, there are several statements to guide the king or administrators. Some of the statements from book 3 are as follows:

A matter of dispute has four feet: law, transaction, custom and the royal edict. (Among them) the later one supersedes the earlier one (3.1.39).

Of them, law is based on truth, a transaction, however on witnesses, customs on the commonly held view of men, while the command of kings is the royal edict (3.1.40) (Kangle 1992, 2: 195).

In the following statement, Kautilya says of social justice: “For it is punishment alone that guards this world and the other, when it is evenly met by the King to his son and his enemy, according to the offense” (3.1.42). The following statements indicate the specificity and detailed nature of some of the laws: “A (widow) remarrying shall forfeit what was given by her (late) husband” (3.2.26). “She shall use it if desirous of a pious life” (3.2.27).

Kautilya emphasizes environmental justice so that every one in society can share and enjoy nature. “They shall be fined who hurt animals and cut the shoots of trees in city parks that bear fruits or yield shade” (3.19.26–28) (Kangle: 1992, 2: 249).

Kautilya recognizes that judges have a social obligation to promote justice in society:

The judges themselves shall look into the affairs of gods, brahmins, ascetics, women, minors, old persons, sick persons, who are helpless. When these do not approach [the court], and they [judges] shall not discuss the suits under the pretext of place, time or [adverse] possession (3.20.22) (Kangle 1992, 2: 253).

It is clearly seen from the above statement that social justice was a justice for all members of the society. The concluding statement of book 3 reinforces this. “In this way judges should look into affairs, without resorting to deceit, being impartial to all beings worthy, of trust and beloved of the people” (3.20.24) (Kangle 1992, 2: 253).

In the activity of trading by merchants, Kautilya emphasizes honesty and justice. He also recommends a heavy fine for artisans and artists who conspire together to bring about a deterioration in the quality of work. He also recommends a heavy fine for traders, who by conspiring together, hold back wares or sell them at a high price.

Kautilya also addresses remedial measures to be taken during natural calamities such as famine, fire, and flooding. Kautilya says:

During a famine, the King should make a store of seeds and food stuffs and show favor (to the subjects), or (institute) the building of forts or water works with the grant of food, or share his provisions with subjects or entrust the country (to another King) (4.3.17).

He (King) should seek shelter with allies or cause reduction or shifting of population (4.3.18).

He should migrate with the people to another region where crops have grown, or settle along the sea, lakes or tanks (4.3.19).

He should make sowings of grains, vegetables, roots and fruits along the water works or hunt deer, beasts, birds, wild animals and fish (4.3.20) (Kangle 1992, 2: 263–64).

These statements reveal a highly pragmatic approach grounded in meeting the needs of the people.

In order to maintain social justice, Kautilya arranged a system of informants to learn of the misdeeds of village officers and heads of departments. In the following statements Kautilya says clearly:

The administrator should station in the country secret agents appearing as holy ascetics, wandering monks, cart drivers, wandering minstrels, jugglers, tramps, fortune-tellers, soothsayers, astrologers, physicians, lunatics, dumb persons, deaf persons, idiots, blind persons, traders, artisans, artists, actors, brothel keepers, vintners, dealers of groceries such as bread, meat, etc. (4.4.3).

They (secret agents) should find out the integrity or otherwise of village officers and heads of departments (4.4.4).

And whomsoever among these he (administrator) suspects of deriving a secret income he should cause to be spied upon by a secret agent (4.4.5) (Kangle 1992, 2: 265).

With such a large and empowered bureaucracy, there was a danger of conflict between the people and the administration. The network of secret agents and informants was meant to guard against possible unrest due to conflicts.

Only some of the statements that are relevant to social justice in state administration have been mentioned here. The *Arthaśāstra*, however deals in an elaborate way with all the intricate details of administration.

The philosophy and practice of social justice with peoples' welfare as a primary goal is also emphasized in other works of ancient India. To cite an example, the book *Tirukkural* (*The Voice of Nobility*) written by the celebrated author Tiruvallavar around 300 B.C. in the Tamil language provides a section on the results of an unjust government as follows (Drew and Lazarus 1991: 112–13):

1. More cruel than the man who lives the life of [a] murderer is the king who gives himself to oppress and act unjustly (towards his subjects).
2. The request, (for money) of him (king) who holds the sceptre, is like the word of him who stands with a weapon (at your chest) and says "give."

3. The country of the king will daily fall to ruin, who does not daily examine into and punish (crimes).
4. The king, without reflecting (on its evil consequences), perverts justice, will lose at once both his wealth and his subjects.
5. Will not the tears, shed by a people who cannot endure the oppression which they suffer (from their king), become a file to waste away his wealth?
6. Righteous government gives permanence to the fame of kings; without that their fame will have no endurance.
7. As is the world without rain, so live a people whose king is without kindness.
8. Property gives more sorrow than poverty, to those who live under the sceptre of a king without justice.
9. If the king acts contrary to justice, rain will become unseasonable, and the heavens will withhold their showers.
10. If the guardian (of the country) neglects to guard it, the produce of the cows will fall, and the men of six duties will forget their sacred book.

CONCLUDING REMARKS

It is recorded in historical texts that the Mauryan empire ruled by Chandragupta and his minister Kautilya produced one of the more successful societies in ancient India and in the ancient world at large. Although Kautilya's *Arthashastra* goes into minute details as a manual, the theme of the manual (or handbook) is clearly toward social justice in the sense of the importance given to people and their welfare (De Bary 1958).

It is noted that the happiness of the people is described as the happiness of the king. The king's welfare lies in that of the people. The king receives the revenue from the people as his fee for the service of protection. This ideal monarchy is achieved through an education of the king that emphasizes self-control as a prerequisite for successful government.

The king is required to get help from state officials and ministers and to seek their advice. The king's behavior toward his people, particularly the afflicted, is like a father toward his son. Punishment is an important aspect because in the absence of punishment the strong person devours the weak; but with the king's protection and social justice, the weak person prevails over the strong. Public interest is of prime importance and is the basis on which all rules are formulated. Punishment when directed with compassion unites the people through virtue, wealth, and satisfaction.

It is emphasized that the king must have a balanced view of various aspects of society in order to ensure social justice. The king should therefore attend personally to gods or to ones learned in the Vedas, to sacred places, minors, the aged, the afflicted, the helpless, and women. Salaries had to be according to learning and service. The welfare of the people claimed the first place in all considerations of policy, and the dominating aim of government was the main-

tenance of law and order, the punishment of the wicked, and the protection of the good.

Thus Kautilya through his *Arthaśāstra* has provided an integrated basis and working guidelines and a procedure for a society to prosper in both material as well as spiritual aspects. According to Kautilya, material and spiritual well-being are provided by the fourfold knowledge, namely, philosophy, the Vedas, economics, and the science of politics. Kautilya also advises that philosophy can be thought of as the lamp of all sciences, the means for all actions, and the support of all laws and duties.

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Part III

The Practice of Social Justice in the Ancient World

The Ideological Basis for Social Justice/Responsibility in Ancient Egypt

SCOTT N. MORSCHAUSER

I

The Egyptian word most often translated into English as “justice” is the term “*ma’at*.” It is used in connection with the promulgation and execution of laws; the suppression of criminal activity; and the correction of official abuses. *Ma’at*, however, also had a far wider application than reference to legal practices alone; but denotes the basic “ordering” of Egyptian life (Helck 1980: 1110–19).

Ma’at defined the divine ordinances by which the universe was originally set into motion and properly maintained, manifested in the rhythms of the natural world: the rising and the setting of the sun, the annual inundation of the Nile, the recurring seasons of planting and harvest.

In the immanent realm, *ma’at* fixed the parameters of Egyptian society itself, setting out the limits for the proper and discretionary exercise of power by those who ruled toward those over whom they had authority.

As attested by the literature that has survived from ancient Egypt, *ma’at* encompassed specific ethical requirements, characterized as both the official and personal responsibilities of the socially advantaged toward their inferiors, as well as the obligations of subjects toward the state—which was embodied in the figure of the king.

The image or metaphor most frequently encountered in ancient Egyptian texts

to illustrate this concept of “order” and “harmony” is that of the “scale.” Political and social equilibrium was achieved when the actions and comportment of an individual—the king and private citizen—balanced out with what *maʿat* demanded of them respectively.

While social roles and expectations may have varied according to position, the concept of *maʿat*, nevertheless, provided a moral standard, by which every member of society, king and commoner, could be evaluated and judged.

Therefore, it would be erroneous to equate *maʿat*, “justice”—or as it is also translated, “*the Truth*”—in ancient Egypt simply with the personal wishes and ideology of the king and his ruling elites;¹ for *maʿat* was linked not only to protological concepts, but also to eschatology. *Maʿat* was *the* ultimate determinant of an individual’s ability to achieve a meaningful existence beyond death.

II

The monarch, as recipient of the office of kingship, and earthly representative of the gods, was required to uphold the “order” bequeathed to Egypt at the creation of the world, in a manner that was requisite with “divine law”—or, perhaps better, “divine intention.”² This expectation is clearly expressed in a wisdom text of the late First Intermediate Period—early Middle Kingdom, purported to be addressed to the Herakleopolitan ruler, Merikare (Helck 1977: 80, 83–87):

Make secure your position in the Afterlife by being righteous, by enacting justice (*maʿat*), upon which human hearts rely . . .

The deity who governs well mankind, the cattle of god—he has made heaven and earth for the sake of humanity; subduing the Watery Chaos, and making the breath—intending that their nostrils should live.

(Human beings) are his images which have come forth from his limbs. He rises in the sky for their sake; and makes for them plants and cattle, fowl and fish, to feed them . . .

He makes daylight for their sake, sailing about (the heavens) to keep watch over them. (God) has erected his shrine about them, and when they weep, He hears them.

From the start, he made rulers for them; (namely) leaders to raise up the back of the weak.

Indeed, the office of the king was fairly well defined in terms of its function; being summarized in a Middle Kingdom solar hymn as “Judging humanity and propitiating the gods; setting order (*maʿat*) in place of disorder. The king is to give offerings to the gods, and mortuary offerings to the spirits of the dead (i.e. those who have been afforded a ritual burial)” (Assmann 1970: 17–22)

The royal instruction to Merikare quoted above, contains similar observations, although it is expanded to include the protection of the land against foreign enemies: “Guard your borders, and build up your fortresses, troops are useful

to their lord. Make your endowments abundant for God. . . . Make ample the daily offerings. . . . God recognizes the one who acts for him” (Helck 1977: 37–40).

These brief passages, enumerating a monarch’s responsibilities toward both the divine and his subjects may be taken as normative. Similar sentiments are ubiquitous in the records of royal *acta* throughout the long history of ancient Egypt.

Thus, the primary duties the ruler was to carry out may be classified as first, the upkeep and maintenance of the temples and their staffs⁴; and second, the ruler’s proper exercise of the legislative, executive, and judicial powers inherent in his office.

It was the responsibility of the king to promulgate *ma’at*, through royal decrees and edicts, which created new laws, and reformed existing legal stipulations. “Justice” and “order” were enforced by the efficient working of the court system, accomplished by the ruler’s assigning competent officials to judicatory positions.

Royal judges themselves were adjured by their lord to execute their tasks with integrity and moderation (Sethe 1961: 1090):⁵

Do not judge unfairly, God abhors partiality; This is an instruction, plan to act in accordance with it:

“Regard one you know, like one you don’t know; one near you, like one far from you. . . . Do not pass over a petitioner, before you have considered his speech.”

“When a petitioner is about to petition you, don’t dismiss what he says, as already spoken. You may overrule him, but only after you let him hear the reason for your doing so.”

Lo, it is said, “A petitioner wants his plea considered, rather than have his case adjudged.”

This royal oration, given at the installation of the king’s prime minister or “vizier,” further cites the historical case of a judge who was reviled for his harshness (Sethe 1961: 1089): “Avoid what was said of the minister, Khety: ‘He denied his own people for the sake of others, out of fear of being falsely called [“partial”]. If one of them appealed a verdict, that he had intended to carry out, he (nevertheless) persisted in denying their appeal.’ But such actions are in excess of *ma’at*!”

Finally, the monarch himself was responsible and liable for pronouncing sentences in capital cases. It is significant that kings are occasionally depicted as reluctant to execute criminals. Indeed, monarchs who were not troubled by this responsibility could be suspected of acting unjustly.

For example, the so-called *Papyrus Westcar*, a literary composition dating to about 1600 B.C., contains a portrayal of the Old Kingdom monarch, Khufu—best known for his building of the great pyramid at Giza. In the text, the king is told of a man named Djedi who is reputed to have the ability to restore to

life a person who had been decapitated. Anxious for a demonstration of such miraculous power, Khufu summons the wonder-worker to court. At Djedi's arrival, the monarch confronts him (Sethe 1928: 30–31):

“Is the rumor true that you are able to re-attach a head that has been severed (from its body)?”

“Yes, I am able, my sovereign, my lord,” Djedi answered.

Then the king said, “Have a prisoner who is in jail brought to me, and execute his sentence!”

But Djedi said, “No, my sovereign, my lord—not to a human being! Behold it is forbidden to do such a thing to the precious cattle (of god)!”

Although the account is a fiction, the attitude and belief expressed by Djedi to the king should be regarded as a widely held tenet of ancient Egyptian morality. Human beings, even criminals, were ultimately considered to be under the watchful eye of the divine (cf. above) or, as the text says, “the precious cattle (of god),” and were not to be killed on whim. Royal power was limited by divine injunction.

Indeed, by the end of the New Kingdom, capital sentences increasingly are ascribed, not to the pharaoh, but to the gods: an obvious attempt to absolve the king from responsibility in another's death (Morschauser 1991: 209–10). This defensive attitude is best illustrated by the Judicial Papyrus of Turin, a document dating to the twelfth century B.C.E. (Kitchen 1983: 350–60). Containing the transcript of a trial for the assassins of the pharaoh, Ramesses III, the historical introduction to the text is cast in the form of a royal apology. Ramesses III proclaims from the Netherworld that he has had nothing to do with the outcome of the proceedings of the earthly court (Kitchen 1983: 351):⁶

As for all that has been done, it is they (e.g. the conspirators and assassins) who have done it. May (the responsibility for) all they done fall upon their (own) heads, while I am innocent and exempted forever; while I am among the great kings who are before Amun-Re, King of the Gods, and before Osiris, Ruler of Eternity.

Such a declaration reveals anxiety about wrongful involvement in the death of potentially innocent parties. The setting for such a declaration, significantly, is depicted as the tribunal of the gods (*Totengericht*), where Ramesses III himself is to be examined at the Last Judgment.⁷

Third, the king was to maintain the funerary system: granting ritual burials to members of the royal administration and ensuring the protection of cemeteries, mortuary shrines, and foundation endowments and wills against tomb robbery, desecration, and embezzlement.⁸

Fourth, the king was obliged to protect the citizenry and country from both internal and external threats—or to remain vigilant against enemies “foreign and domestic.”

This would involve the suppression of banditry within the Nile Valley itself and controlling the movements of nomadic groups along border areas. Inherent in this was the king's legal role as "commander in chief," and his ability to declare and prosecute war.

Royal campaigns had to be legally justified and could not be initiated without the authorization of the divine; the king presented his declaration of war before an oracle. Combat eventually came to be regarded as a judicial ordeal—a referendum on the fitness of the ruler to lead the country and on the rightness of his cause (Morschauser 1985: 149–50).⁹

Thus, the monarch's fulfillment of these four primary duties—satisfying the divine patrons of the land, governing the Nile Valley in accordance with the law, maintaining the integrity of the funerary system, and defending the country from invasion or unrest—determined whether the king was a "beneficent ruler,"¹⁰ upholding "*ma'at*" on behalf of the gods, or whether he had acted in a manner unworthy of his office, thereby threatening the very fabric of society.¹¹

III

Ma'at, was not restricted solely to the king's administrative duties but was operative within the lives and conduct of the entire citizenry of Egypt.

The subjects of the king—who were divided into the royal elites, called the *p'at*, and the general populace, known as the *rekhyt* (possibly "those who were enrolled in the tax-lists")—were above all, obliged to be obedient to their "lord."

Clearly, allegiance to the king was subsumed under the rubric of "*ma'at*"; and "obedience" was broadly interpreted to include paying taxes and laboring on behalf of the crown; the conscientious execution of appointed office; along with the public pledging of fealty—thereby promising by oath not to rebel against the sovereign.¹² Such duties, described as "loving the king with one's heart" (Sethe 1961: 260), along with the benefits for acting so, formed the basis of what might be termed a "social-contract" between the Egyptian monarch and all his subjects; and *ma'at* was interpreted according to this de facto agreement.

However, *ma'at* entailed further responsibilities beyond blind "loyalty" to the king, though not surprisingly, it was this latter aspect that was emphasized in royal propaganda. Officials were expected to act in accordance with standards that were not simply of royal, but of divine origin; a distinction that is important, though often unappreciated.

Obligations to a transcendent principle of "justice" were specifically expressed in Egyptian texts as demands for personal tolerance, forbearance, and mercy toward the disadvantaged. These "ethical" requirements of *ma'at* are cast in both positive and negative forms.

As affirmations, they express what one "ought to do" or what has been upheld and praised by the gods, and are transmitted from one generation to

another (i.e., “wisdom”). They are also delineated negatively as excesses or improprieties from which one should refrain and that were universally condemned.

The positive elaboration of *maʿat* first appears in the Old Kingdom, in the so-called autobiographical tomb inscription (Edel 1944: 1–90). In these mortuary texts, the deceased enumerates his rectitude and fairness in dealing with his contemporaries and his competence in executing his office. The following is a typical example of the genre:

I have carried out justice for my lord;
 I have satisfied him with what he loves.
 I spoke truly; I did what was right;
 I spoke fairly, and reported accurately.
 I held onto what was opportune, so as to stand well with people.
 I adjudicated between two, so as to content them both,
 I rescued the weak from one stronger than he,
 as much as was in my power.
 I gave bread to the hungry, clothing to the naked, water to the thirsty.
 I brought the deceased who could not afford transportation to the cemetery;
 I buried him who had no son.
 I furnished transportation for him who lacked it.
 I respected my father, and pleased my mother, rearing up their children.

(Sethe 1935: 198–200)

This basic list—upholding fairness in office, concern for those in need, familial devotion, and care for the deceased—is further expanded as time goes by to include such statements as, “I was one who was father to the orphan, and who gave aid to the widow” (Sethe 1928: 79); “I was friend to the lowly; well-disposed to the one who had nothing. I helped the hungry who had no goods, and was generous to those in misery” (Sethe 1928: 80–81); “Whoever was lost, I put back on the road; I rescued the one who was robbed” (Sethe 1928: 7).

The negative corollary consists of pronouncements that an individual had refrained from engaging in criminal acts, from committing sacrilege, or from oppressing social inferiors. The most celebrated example of this type appears in the 125th chapter of the *Book of the Dead*, where the deceased declares his innocence before the Eschatological Court, for example, at the “Last Judgment.”

It is striking that in the scenes that often accompany this text, the “heart” is placed in the pan of a balance scale and is ultimately weighed against “*maʿat*” itself, which is represented as a feather (Silverman 1991: 51, n.32). Therefore, both thoughts and deeds of the deceased were adjudged as to whether they conformed to the divine standard of *maʿat*/justice; which is partially specified as the following:

I have not killed; I have not robbed; I have not coveted; I have not stolen; I have not committed sacrilege; I have not trespassed against sacred property; I have not committed

a ritual impurity; I have not committed adultery; I have not blasphemed; I have not robbed my fellow human-being; I have not slandered another; I have not added to the weight of the balance; I have not falsified the placement of the scales; I have not increased nor reduced the measure; I have not been neglectful of the proper offerings; I have not interfered with the actions of the god. (De Buck 1948: 116–22)

Inasmuch as such statements appear consistently in tomb inscriptions and funerary stela over millenia and are also alluded to in legal stipulations, judicial documents, and wisdom-texts, one may refer to these tenets of *ma'at* as being in a real sense, “canonical”—precepts to which all segments of ancient Egyptian society were expected to adhere.¹³

Again, monarchs were especially adjured to be kindly disposed to the less fortunate of their subjects. In the *Instruction to King Merikare*, mentioned above, forbearance and toleration are specifically commended as part of “the laws” (*hprw*) or “customs of kingship”:

Execute justice (*ma'at*), that you may endure on earth.
Calm the weeper, and do not oppress the widow.
Do not expel a man from his father's property.
Do not wrongfully remove an official from his office.
Beware lest you punish wrongfully.
Do not kill, for it is of no benefit to you.
Punish (instead) with beatings and with imprisonment,
for this land shall be well-founded under such actions. (Helck 1977: 27–28)

Not unexpectedly, Egyptian rulers and their high officials are often addressed by the common ancient Near Eastern epithets, “defender of the orphan,” “husband to the widow,” “rescuer of the fearful,” and “savior of the distressed” (Kitchen 1979: 151). These titles aptly point to the special role that the king and his deputies were to assume in protecting those who had been improperly deprived of legal recourse. Indeed, the assumption of such a role defined the contents of *ma'at*, as something other than simply the implementation of “order” by coercive means.¹⁴

IV

Clearly, mercy, tolerance, and rectitude in office, formed the “ideal” basis of the ancient Egyptian *ethos*; yet one must ask how these demands were put into actual practice. Was there—apart from the evidence of laudatory statements and exhortations to demonstrate virtue from “literary” texts—any special preference exhibited by the king and royal elites for the “poor” in the course of administering their duties of office? Has there, in fact, survived any actual legislation that would support such an inference at all?

These questions are difficult to answer as it pertains to surviving legal *acta* of the king. First, and important, the Egyptian terms often rendered in English

as the “poor” (*nmh/nmhyw*), are not equivalent to our modern definition of the word that primarily denotes “victims” of poverty.

Indeed, the Egyptian word *nmh*, has predominantly legal and religious rather than economic implications. The juridical usage of the term refers to private citizens who were not in the king’s employment and, therefore, who were outside of the machinery of the state. This sense of the word as denoting “private citizens” unaffiliated with the royal bureaucracy is well attested in judicial documents where the so-called “poor” are described as owning land, property, slaves, and as gainfully employed (Kruchten 1981: 169).¹⁵

The religious connotation is clearly related, since it refers to individuals who were not formally associated with the temple cults (Morschauer 1985: 169).

Understood in the general legal sense of nonroyal persons and not as the economically disadvantaged, there *is* ample evidence that such people were protected by the king from abuses by means of “law,” the most famous case being the “Decree of Horemheb” (Kruchten 1981: 28–192), in which the king—the last pharaoh of the eighteenth Dynasty—attempted to rectify abuses perpetrated by state officials against private citizens; that is, the so-called “poor.”

Horemheb specifically condemns: (1) tax-collectors for robbing citizens of items intended for royal imposts; (2) the theft of cattle-hides from private estates by the soldiery, and (3) illegal detention and impressment of slaves and servants of private citizens for unauthorized business of the state (Kruchten 1981: 193–201).

This edict probably incorporates older stipulations in the body of the text and should not be seen as the result of Horemheb’s formulation alone (Kruchten 1981: 206–14). Thus, one may infer that the actions undertaken by the king represent a reaffirmation and continuation of earlier pharaonic policy towards that segment of the populace supposedly designated as “the poor.”

In this regard, it should be noted that actual “legislative” material from ancient Egypt has come down to us primarily in the form of royal decrees, although the focus of such documents is more restricted than the stipulations attributed to Horemheb. In fact, such edicts as have been preserved for us are often concerned with the king’s granting of exemptions and tenant rights to groups associated with religious estates; for example, their cultic and support staffs.¹⁶

Royal decrees of this type forbade the removal of any priest, artisan, or landed farmer for the king’s business. They were not to be used as cultivators on any other property of the state, nor were they to be press-ganged for building projects or military service. Exempted institutions and their personnel likewise, were not required to supply food or shelter for royal commissioners on official duty. While such stipulations are usually addressed to provincial and local officials in whose district the temple was located, there are also provisions that the general populace report any actual knowledge or rumor of an infraction against the institution and its staff to the royal courts (Morschauer 1991: 185–86).

However, it is significant that letters of protest to the king and his courtiers have also survived, denouncing appointees of the state for blatant disregard of

an estate's exempt status (Gardiner 1937: 123–24);¹⁷ and violations against protected property and personnel appear to have been widespread, and in some cases, tolerated.

Nevertheless, despite an otherwise lack of primary legal documentation, it should be stressed that officials and individuals of wealth and influence were enjoined in wisdom texts to care for and exhibit “preferential” treatment to the disadvantaged, as the following admonitions from a late New Kingdom instruction demonstrate (see Lichtheim 1976: 155–56, 161):

If you find a large debt against a private citizen:
 Make it into three parts;
 Forgive two, let one stand:
 You will find it a path of life.
 After sleep, when you wake in the morning,
 You will find it good news.
 Better is praise with the love of men,
 Than wealth in the store-house.
 Better is bread with a happy heart,
 Than wealth with vexation.

Do not startle a widow when you find her
 in the fields, and then fail to be patient
 with her reply.
 Do not refuse your oil jar to a stranger.
 Double it before your companions.
 God prefers him who honors the one in need,
 To him who worships the wealthy.

It should be pointed out that literature of this type—used to educate scribes and employees of the royal administration—is attested for millenia; and this fact suggests that such appeals on behalf of the needy, again, represented a widely held standard of morality, undoubtedly embodying the very requirements of *ma'at*.

Indeed, even with its shortcomings, as evidenced by the very need for “laws” to prevent and punish wrongdoing, ancient Egyptian society—its legal thought, religion, and political structures—was undergirded by the concept of *ma'at*: a transcendental norm of justice and order bequeathed to them by the gods from the creation of the world.

Inherent in this, was an overarching belief in individual responsibility: There could be no evasion of justice, either by king or commoner, since the entire cosmos was under divine ordinance and command.

Whatever the historical failures of this system (though it worked fairly well for over two and a half millenia), and no matter how much the ruling authorities may have attempted to identify their personal wishes with “justice,” it was understood that *ma'at*—the ultimate standard of righteousness—would prevail in the end.¹⁸

“Justice” itself, was thoroughly grounded in eschatology, in the concept of a “Last Judgment”; and, therefore, Egyptian ethics and behavior were themselves regarded as penultimate in nature. Justification and vindication rested not in the successes wrought by power, but in the righteousness of a supreme deity, Re^c—the maker and protector of humankind, or “his precious cattle.”

The principle of *ma’at*, its formulation originating in the primordial utterance of God, proclaimed that the king and his officials were appointed as temporary herdsmen and shepherds of humanity. These privileged few were understood to have been granted divine permission to rule and maintain order. However, they were also given the responsibility to ensure that life in ancient Egypt was lived according to the blessings and intentions given to the cosmos and its inhabitants at Creation.

NOTES

1. Egyptian historiographers recalled monarchs who ruled without divine authorization, nor in accordance with divine command (see generally Redford 1986: 269–75).

2. Morenz (1973: 117–20), however, calls *ma’at*, “a basic value” that was “established by God,” and “commanded by his word,” but that was “not an explicit law.”

3. See also Baines 1991: 128.

4. See also Hornung 1971: 214–16. The relation of such actions to the principle of *ma’at* is explicitly linked in official inscriptions, wherein rulers claim to have promulgated and upheld “order” through the construction and expansion of divine shrines and sanctuaries throughout Egypt. Benefactions to a cult were regarded as fostering the goodwill of the gods, not only toward the king, but by extension, toward the entire country. Conversely, the king’s failure to perpetuate this system could result in disaster. In Egyptian causality, divine displeasure could be manifested by defeat in war, by the outbreak of disease among the populace, or by low levels of the Nile, accompanied by famine—triggering social discord and strife—which were themselves blatant signs that *ma’at* or “order” had been violated and disrupted (see Morschauser 1985: 148–49).

5. See also Lichtheim 1976: 23, and particularly, the monograph of van den Boorn 1988.

6. See the discussion of Lorton 1977: 29–30.

7. This is not to say that kings did not execute criminals (cf. the discussion of Willems 1990: 27–54). However, the fear of committing wrongful death was real and is attested as early as the Old Kingdom. See, for example, the inscription of the courtier Re^c-Wer (Sethe 1935: 232). There, the king accidentally brushes his retainer, Re^c-Wer, with the scepter denoting “punishment.” The monarch immediately decrees, “It is well!”—that is, Re^c-Wer was innocent of any crime.

On the related question of amnesty and the pardoning of criminals (or innocent parties falsely accused or imprisoned), there are instances where the king or a royal official administers *sdjff(3)-tr(yt)*, “the expunging/wiping away of sin/wrong.” The term—wrongfully called a “loyalty oath”—is used for the pardoning of rebellious vassals following their defeat in battle, and their readmittance into the Pharaonic imperium; as well as for individuals charged with crimes (e.g., theft, embezzlement, treason). The latter usage is interesting since *sdjff(3)-tr(yt)* appears to be used in legal maneuvering, whereby

the accused is “pardoned” so as to turn “state’s evidence.” Such a practice, however, seems to have been misused, and there are denunciations of officials for letting criminals free without proper punishment (see the discussion of Morschauser 1988: 93–103). References to “amnesties” from royal hymns of the Ramesside Period are difficult to evaluate as far as “general” policy is concerned. It is unclear if the supposed release of prisoners was a routine act of the king’s office (e.g., at his accession) or whether it represented a personal—and hence, isolated—act of largesse. Despite the large amount of inscriptional material available to us from Ramesside rulers, we are still unsure as to the historical context in which supposed grants of amnesty occurred.

8. See generally the monograph of Goedicke 1967; see also Lorton 1977: 6–12.

9. See Liverani (1990: 150–59) for a discussion of the ordeal of war in the ancient Near East. Curiously, we do have a number of tantalizing references in Ramesside texts, implying the possibility that pharaohs—negligent in their capacity as leaders in war—could be arraigned before a divine tribunal (perhaps an oracular setting?). Historically, there does seem to be at least two instances where such a procedure was instituted. Indeed, it is likely that Ramesses II was somehow implicated by the priesthood of Amun at Thebes for the pharaonic losses suffered at the Battle of Kadesh at the hands of the Hittites. Ramesses defends charges that he had been rejected by the god Amun on the battlefield, specifically citing as support the king’s fulfillment of a written “testament” that he had made with the deity, enumerating in detail all the building activities and donations he had given to the cult of Amun prior to the battle. Ramesses argued, in effect, that he had acted in accordance with *ma’at* by enforcing his religious duties (see Morschauser 1985: 139–53, 206, n.578).

The second case involves Ramesses II’s son and successor Merneptah. In his famous “Israel” stela, the king himself is depicted as appearing before the divine tribunal in Heliopolis, where he is questioned about foreigners who had trespassed and ravaged territory around Memphis. Although such a scene is often pronounced—and dismissed—as “stereotyped,” the text is clearly cast as an apology against charges of royal negligence; that is, Merneptah had not adequately protected Memphite territory and had failed to control foreign groups who had settled in the Nile-Delta (see Morschauser 1987: 501–6).

10. See the comments of Posener 1956: 32–33 and Spalinger 1982: 39–44 for the term *nswt-mnh*, “benevolent king.”

11. See Redford’s discussions (1984: 231, and 1986: 189–90) of the opprobrium attached to the reign of Akhnaten.

12. See Morschauser 1987: 411–37 for “loyalty oaths” in ancient Egypt.

13. For a partial list of “taboos” and restricted and condemned actions, see Morschauser 1991: 37–70, 265–66, n.4. Stipulations of threats and curses clearly represent societal norms.

14. Note especially Ramesses III’s apologetic (in Edgerton and Wilson 1936: 133–34) regarding his assumption of the throne: “I have not tyrannized; I have not taken my office by bribery.”

15. See also Lorton 1983: 360.

16. See generally Goedicke 1967: 231–48; Edgerton 1947: 219–30; Théodoridès 1975: 1037–43.

17. See also Wente 1990: 74, 128, 131. Note, however, Ramesses II’s comment in the Battle of Kadesh (“Literary Record”) that he had “released” to his officers “their servants whom others [i.e., Ramesses’ predecessors] had impressed” (Morschauser 1985: 157–59).

18. See Morschauser 1991: 267–68 for an ancient Egyptian “justification” for “curses and threats” and their relation to the concept of *ma’at*.

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Social Justice in Early Islamic Society

FEREYDOUN HOVEYDA

The modern concept of social justice is based on a secular philosophy that took shape in the Western world in the eighteenth century and was enshrined, after a long evolution in the Universal Declaration on Human Rights (1948). At its core, this philosophy emphasizes individual freedom, tolerance, human dignity and a complete separation of church and state.

Islam, advocating total submission to the will of Allah and establishing no separation whatsoever between government and religion, seems at first sight far from the philosophy that led to modern welfare legislation. In many surats, the Koran forbids the believer to question social inequalities. It considers social differentiations as willed by Allah. One surat, for instance, states: "See how we have given preference one over the other, and verily the Hereafter will be greater in degrees and greater in preferment" (XVII:21); and "Covet not the thing in which Allah hath made some of you excel others. Unto men a fortune from that which they have earned and unto women a fortune from that which they have earned" (IV:32); and "Allah hath favoured some of you above others in provision. Now those who are more favoured will by no means hand over their provision to those whom their right hands possess, so that they may be equal with them in respect thereof. Is it then the grace of Allah they deny?" (XVI: 71). There are many other surats in the same vein.

Moreover, the believer, in his total submission to the will of God, has only duties and obligations toward Him. He must obey the Divine Law. Yet, most paradoxically, from these obligations, emerge some rights, as for instance, the duty of respecting other men's rights (Brohi 1978: 181).

One also finds in the Koran elements of "social justice" in the form of

recommendations to the believers or even duties imposed on them. Thus, there are no less than sixty-nine instances concerning almsgiving and related matters. The Koran goes as far as to link these injunctions to the faith itself, as in the following surat: “Hast thou observed him who belieth religion? That is he who repelleth the orphan and urgeth not the feeding of the needy” (CVII:1–3).

Regarding all the references to mutual assistance and help to the needy contained in the Koran and the *Hadith* (Sunna: tradition of the prophet), many Muslim writers conclude that an “elaborate system of social justice” existed in the early days of Islam.

Notwithstanding the differences between the social precepts of the Koran and the modern concept of social justice, one can agree with these writers. Indeed, every society, past or present, has its own conception of justice. What the Koran and Muhammad brought to the Arabian peninsula was a new idea and new ways of taking care of the poor and the deprived (Rodinson 1966: 11).

In this chapter, I will consider the problem only in the early times of the rise of Islam. For purposes of clarity, I will divide my remarks into two parts: (1) the precepts in the Koran and *Hadith* (Sunna) and (2) social justice in the community created by the Prophet in Medina and in the early years of Islam’s expansion.

THE TEXTS

According to history, Islam appeared in the early years of the seventh century in Arabia, an arid country that could not support a large population. The limited number of underground pools sustained only a few oases. People lived in nomadic tribes that fought one another in order to loot their respective small possessions. A few tribes had settled where water supplies permitted and had established cities like Mecca and Medina on caravan routes. The Ummayyad branch of the Quraish tribe (to which belonged the Hashemite clan of the Prophet) ruled in Mecca.

In contrast to the rich Ummayyads, Muhammad’s family was very poor. His father had died before his birth, and his mother had died when he was six. Thus, since his infancy, he had understood what poverty and orphanage meant (Farrah 1968: 39).

Moreover, in Mecca sharp differences separated the masses of poor from the rich minority. When his mission started, Muhammad’s preaching of monotheism and social reform went hand in hand. Actually, at the beginning, Muhammad was, in a way, calling for the reform of an unjust society, and his emphasis was indeed on the plight of the poor, the weak and the needy.

Later, when Higrā took place, Muhammad applied his social precepts in the “community of the believers” he set up in Medina (Umma). As one author puts it: “If he gained converts, it was due less to the threats of eternal fire than to the strong justice and equalitarian principles embedded in his message of sub-

mission to God. The promise of sharing with the 'haves' had a particular appeal to the 'have-nots' of Mecca. The aristocracy of Qureish did not hesitate to remind him: Why is it that thou art followed only by the most abject from our midst?" (Farrah 1968: 43).

As already stated, the Revelations contained many references about solidarity among the believers and about the necessity of alleviating the lot of the poor. And more precisely the compulsory almsgiving called *Zakat* was considered as the third pillar of the religion, out of five (it came after the *Shahada*, or bearing witness that there is but one God and Muhammad is his envoy—and after the *Salat* or five daily prayers—and before the *Sawm* or Ramadan's fasting and before the *Hajj* or pilgrimage to Mecca).

A kind of "poor tax" or "poor due," the *Zakat* literally means giving back to God a portion of his bounty as a means of expiation or purification of what the believer retains for himself. It is embodied in the following verse: "Establish worship and pay the poor-due and obey the messenger, that happily ye may find mercy" (XXIV:56). At the beginning *Zakat* was rendered as an act of faith, but quite rapidly, it became a legal tax. The Koran specifies: "The alms are only for the poor and the needy, and those who collect them, and those whose hearts are to be reconciled, and to free captives and debtors, and for the cause of Allah and the wayfarer; a duty imposed by Allah. Allah is Knower, Wise" (IX:60).

Under the Prophet and the first four caliphs, the alms went to: (1) the poor and the needy; (2) officials who gathered the *Zakat*; (3) the recalcitrant Meccans whose hostility had to be bought off; (4) slaves to purchase their freedom; (5) individuals for paying back debts incurred as a consequence of acts of benevolence; (6) to the State for arming soldiers engaged in a holy war against infidels; (7) institutions dedicated in the way of Allah; and (8) the poor travelers. (It was sometimes used for other purposes, and later, under the Ummayyad dynasty, became part of the general budget of the state.)

In addition to *Zakat*, there were "voluntary" or "nonobligatory" contributions suggested by the scriptures under the name of *sadaqua*. Indeed, in many surats, the Koran summons men to be generous. And as the community of the believers grew larger, some scholars, basing their opinions on the *Hadith*, suggested that those who had superfluous possessions should voluntarily donate to the public treasury (*Bait-al-Mal*) (Nait-Belkacem 1978: 144).

The precepts concerning social justice in the Koran and the *Hadiths* have prompted many apologists to write extensively on the subject. In their opinion, Islam's welfare system is superior to what has been developed in the Western world. Thus Anwar Iqbal Qureishi, a Pakistani, writes: "The concept of social welfare covers every aspect of the ideal human society to which Islam points. In Islam ethics not merely inculcate the attitude of self-sacrifice and social co-operation, but also promotes virtues in the individual that make it possible for him to subordinate his own interest to the collective good. . . . The ethical code so prescribes the obligations towards members of one's family, one's neigh-

bours, one's colleagues in trade and profession, the incapacitated, and the generally needy from orphans and widows down to the needy traveller and stranger" (Qureishi 1978: 62).

In Qureishi's view, the prohibition of usury by the Koran means that Islam is opposed to excessive wealth (72). Yet another apologist, Yusuf (1971), considers that Islam's goal consists of the eradication of poverty. Yusuf concludes: "The concern for the satisfaction of the basic needs of every individual member of the society and for maintaining the standards of justice and equity in the development of economy is grounded in the moral conscience of man" (14). Another scholar (Shaikh 1970) affirms: "Islamic laws of inheritance make significant contributions to the construction of an equalitarian society (31).

Here one should point out the inequalities that beset women in Muslim scriptures as well as in legal practice. Women were (and still are) treated as second-class citizens. Moreover, human rights in the modern sense did not exist in Muslim societies.

Maxim Rodinson (1966), a French scholar, sums up the Islamic ideal of social justice in the following way: "a State directed in accordance with the principles revealed by God, treating all believers as equal before Divine law, practicing within the Muslim community an advanced form of mutual aid, at the expense of the better-off and to the benefit of the poorer sort. This is the ideal that the reforming and revolutionary movements so numerous in Muslim history strove, again and again, to realize" (26).

Even the apologists recognize that this ideal was rarely put into practice. One of them, Qureishi (1978), concedes that "the benevolent aspects (of the Koran) began to be dishonoured with the rise of kingships in the Muslim world" (70). Another apologist, Nait-Belkacem (1978), writes: "The social justice which was the mark of Islamic civilization during its days of splendour remains as much in the letter as in the spirit, a far-off work, offering to those who wish to realize it, a vast field of theoretical moral codes and objectives yet to be attained" (136-37).

In order to avoid the conclusion that the ideal of social justice was never put into practice, most authors locate a so-called "ideal period" during the few years of the Prophet's rule in Medina and in the twenty-nine years between his death and the rise of the Ummayyad dynasty. This was the period during which the companions of Muhammad, the first four caliphs (Abu Bakr, Umar, Uthman, Ali), directed public affairs. These twenty-nine years referred to as a kind of "golden age," were, in fact, full of turmoil and unrest. Actually, after the two-year term of Abu Bakr, the three other caliphs were assassinated.

THE PRACTICE

Muhammad preached in Mecca. But in Medina he assumed the role of head of state (or ruler of the community of believers). Those Muslims who had followed him in the Higra, contrary to Medina's new converts, were poor, and the

Prophet had to cater to their needs. He established a public treasury (*Bait-al-Mal*) through which taxes were collected and, then, were used to pay pensions to the needy and cover other necessary expenses. This practice was more or less pursued by the first four caliphs after Muhammad's death.

Solidarity and help was extended to the non-Muslim as well. For instance, chronicles recount the story of Umar's (the second caliph), inviting an old abandoned Jew to his home, giving him his own food and having the public treasury bestow on the Jew a pension until the end of his days.

But as the Muslim community (Umma) increased in size with the Islamiization of the whole peninsula, the normal sources of revenue proved insufficient. Rich people were exhorted to donate voluntarily to the *Bait-al-Mal*. In addition, the authorities resorted to public ownership. Thus, it is said, that the prophet sequestered a piece of land in Medina to serve as pasture for horses belonging to Muslims (Nait-Belkacem 1978: 145). For the same purpose, Umar put aside a piece of land at Rabdha. The proprietors complained to him. The second caliph replied: "All goods belong to Allah! People are the creatures of Allah! If I were not obliged to do certain things to remain in the path of God, I would not have sequestered a single span of land (Nait-Belkacem 1978: 145). Umar also refused to distribute among the Arab conquerors the regions gained in Mesopotamia and Syria, justifying his decision in the following manner: "If we were to divide these lands, nothing would remain for those who come after you. What would they say, these Muslims, when they saw the land already distributed, inherited and possessed? . . . What would be left of these lands for the orphans and widows of these countries?" (Nait-Belkacem 1978: 196). Instead of dividing the lands, Umar and the two other caliphs after him preferred to establish a large number of small cultivators in village groups and to let them use the lands.

According to some chronicles, there were no beggars in the community of believers (Umma) at the time of the Prophet and of the first four caliphs (Nait-Belkacem 1978: 149). Not only did the public treasury (*Bait-al-Mal*) care for the poor, but the Prophet and the caliphs protected the workers and the orphans. According to the *Hadith*, the Prophet says: "He who willingly works and does not have shelter, must be given shelter. If he is single, then he must be given a wife. If he does not have a camel let him claim one." In the *Hadith*, he adds: "He who leaves after his death dependants deprived of support or very young children, his affair is my concern. I become guardian."

It is not possible to verify the extent to which the prescriptions of the Koran, in the field of social justice, were really put into practice. The only thing that seems certain is that during those early days the growing Muslim society presented in general the features of an *ethical society* (Gibb 1962: 197). But things were to change quite rapidly after the Umayyads had proclaimed the hereditary caliphate. The Prophet himself and the first four caliphs were already in the habit of using the *Bait-al-Mal* for other purposes than mere social justice (Rodinson 1966: 38). After these caliphs, this became the general rule.

Moreover, with the conversion of the conquered people, many inequalities appeared: between Arabs and non-Arabs, between Muslims and non-Muslims, and, more generally between rich and poor. Very rapidly under the Ummayyads, huge fortunes, both in land and in money, were constituted at the hands of a few privileged members of the society. At that time, society was divided into *four classes*. At the top were the ruling Arab Muslims. Next came the converted, or neo-Muslims. They were sort of second-class citizens, reduced to the position of “clients” (*mawali*)—a status they resented. The third class was made up of the members of tolerated sects—namely, the Jews, Christians, Sabians, and, in Iran, the Zoroastrians (*Dhimmis*), who were compelled to pay a special tax in return for Muslim protection. Although these sects enjoyed a wide measure of toleration, at times they were subjected to humiliating treatment (they had to dress in a special manner, were not allowed to ride horses, etc.). At the bottom of society were the slaves. Although appreciably ameliorating the condition of the slave, Islamic rulers still preserved the institution. In early Islamic society, slaves were recruited among prisoners of war, including women and children, unless ransomed, and were obtained by purchase or raiding. Nevertheless, the liberation of slaves was always looked upon as a good deed, entitling the master to a reward in the next world. When liberated, the slave enjoyed the status of a “client” (Hitti 1960: 231–37).

Naturally, the Ummayyads, who represented the aristocracy of the Quraish tribe and who ruled Mecca before Islam, were not as inclined toward social justice as were the first four caliphs. They used the *Bait-al-Mal* largely for purposes other than the care of the needy. Moreover, the Ummayyads subjected the newly converted (*mawali*) to taxes other than the *Zakat* (except for a short period under Umar II, who was a devout Muslim and who ordered the application of Islamic rules as they existed at the time of the Prophet and the first four caliphs) (Hitti 1960: 218). Pressured by heavy taxation, many peasants flocked to the cities to enlist in the army and enjoy military privileges. But since this meant a loss for the public treasury, the authorities forced them to return to their villages and pay the same tribute as before conversion. Labor in the large estates (*latifundia*) was underpaid. Inequalities between those who had received landed properties and others who had not—in general, between rich and poor—grew steadily. It is obvious that such a situation would arouse protests, revolts, and conflicts—which, in turn, would nurture schisms (Kharijites, Shiites, etc.). This situation was so much against the aspirations of the masses that revolutionary movements shook almost regularly the Islamic world over the centuries (Rodinson 1966: 70–72).

On top of that, Umar II imposed humiliating restrictions on Jews and Christians, excluding them from public offices and forbidding them to wear Muslim garb (Tritton 1930: 35). Discontent was growing in many circles, as caliphs and aristocrats estranged themselves from the community of believers. Opposition to their rule was developing throughout society. The ever-growing chasm between the poor and the rich aggravated social antagonisms in the cities as well

as in the countryside (Meuleau 1984: 606). Such antagonisms sometimes reached the level of "civil" wars, as was the case with black slaves in Mesopotamia in the early ninth century: These slaves were from Zanzibar and were subjected to very harsh treatment in the agricultural development of the region. Under their leader, who pretended to be a descendant of Ali, the son-in-law of the Prophet, they occupied Obolla, Abadan, and Ahwaz, where they established a kind of "communist" society. In 871 they even succeeded in raiding Basra. This terrible insurrection lasted for more than fifteen years. Finally, the black slaves were massacred (Wiet 1957: 90–91).

Since the Umayyads grasped power there were many other instances of such turmoil and disorder in the history of Islam. But such unrest does not pertain only to the period under review, that is, the early times of Islam's rule. The above-mentioned cases suffice to show that the practice of social justice rapidly fell short of the ideal of the Koran and even the Sunna. Broadly speaking, the principles and the prescriptions in these two sources represent Islamic society as a balanced community in which each individual forms a unity with his fellow citizens, based on fraternity, social solidarity, and equality of rights and duties. As Moloud Kassim Nait-Belkacem, a former minister of religious affairs of Algeria, puts it: "This society must work towards a common objective. Its activity must be organized under the aegis of a just arbitration which can assure work for everyone according to his capability and merit, and an equal chance to all. The wealth of the Umma (the Islamic community) must be evenly distributed to all members according to need, taking into account the solidarity which binds them" (Nait-Belkacem 1978: 137).

In all societies, social justice goes hand in hand with a certain degree of economic justice. Although the Koran respects private property and private ownership and encourages trade, Muhammad established economic justice in the small community he set up in Medina. The first four caliphs tried to follow in his path. But very soon injustices and inequalities appeared (as indicated by social unrest and assassinations under Uthman, the third caliph, who was accused, among other things, of nepotism). Later, the situation deteriorated. For a short period at the beginning of the Abbassids (750), the new authorities tried to apply the prescriptions. But once again, the gap between rich and poor rapidly widened. Paradoxically, this happened in a period of incomparable affluence.

Indeed, the eighth and ninth centuries were a period of very high prosperity that spanned well into the tenth century. Constantly growing trade, large agricultural output, and important "industrial" production contributed to an increasing enrichment of the entire Muslim world. Wealth accumulated rapidly in the hands of certain classes of society. Merchants and court aristocrats profited much more than other members of the community of believers.

As a consequence, while the rich were getting richer, a deepening impoverishment struck the lower classes of society, in the cities as well as among the peasants (Lombard 1971: 165). Social protest movements sprung up everywhere

and gained momentum. They reached a peak in the tenth century in the “Qarmatian” movement, named after Hamdan Qarmat, an Iraqi peasant who claimed to have read in the stars that the Iranians were going to gain once again the upper hand over the Arabs. The movement stressed the importance of tolerance, equality, and social justice. It even had some “communistic” overtones in as much as some of its proponents advocated community of property—and even wives! The movement supported itself from a “common fund” created through voluntary contributions, which were rapidly transformed into obligatory taxes!

The “Qarmatian” movement started as a more or less secret organization. It ended up grouping workers and artisans into guilds (*sinf* in Arabic), (Hitti 1960: 444–45). These innovations eventually reached Europe where, according to the well-known French orientalist Louis Massignon, they influenced the formation of guilds and the birth of Freemasonry (see *Encyclopedia of Islam* 1960).

By the end of the ninth century and by the beginning of the tenth, the “Qarmatians” founded an independent state on the western shore of the Persian Gulf. From there, they conducted bloody raids into the caliph’s empire! They even occupied Oman and a part of southern Mesopotamia, cutting off the pilgrimage road. In the year 930, they seized Mecca and removed the Black stone, which they took with them.

CONCLUSION

In the Koran as well as in the traditions of the Prophet (*Hadith* or *Sunna*), one finds prescriptions that, put together, can be considered as a coherent system of social justice, especially with regard to the time (i.e., seventh century) at which they were promulgated. Moreover, both sources contain directives on economic justice, without which social justice would seem meaningless.

Nevertheless, it is not possible to agree with some Muslim apologists who regard these prescriptions as comparable or even superior to social security and welfare systems in contemporary societies. As explained in the introduction of this chapter, today’s concept of social justice is based on a philosophy that emphasizes the individual and his or her basic freedoms and imposes a complete separation of religion (church) and state.

Be that as it may, the Islamic social ideal lasted for only a very short period, referred to by Muslim scholars as a “golden age.” In the view of these scholars, this period covers the rule of Muhammad in Medina (622–632) and that of the first four caliphs (632–661). Afterward, with the exception of a few short periods, inequalities widened, and social justice fell far behind the ideals defined in the revelations.

Today, according to Muslim scholars themselves, the situation has barely improved. Thus one scholar writes:

Sadly we are forced to admit that our situation is much worse (than in Europe and America); we cannot even establish any comparison. Even in the richest of the Muslim

countries . . . we see the existence of the most atrocious poverty alongside the most scandalous opulence, together with all the tragedy inevitable in such a situation. In our community (of believers) it is no longer just a matter of the kind of cases which surprise journalists, as in Europe and America; there is a gulf, a bottomless chasm, between the social justice defined by Islam and the situation of Muslims to-day. (Nait-Belkacem 1978: 151)

In conclusion, it is useful to quote another scholar, this time a Muslim cleric from King Abdul Aziz University in Mecca: "In this world which is called 'Islamic World,' you look and then you see a social reality which is not pleasing. Then you open your eyes and ascertain that there are social institutions which do not guarantee justice" (Nait-Belkacem 1978: 151).

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The Idea of Social Justice in Ancient China

THOMAS H. C. LEE

JUSTICE AS A PROBLEMATIC

Introduction: Justice as Morality

One of the most important characteristics of Chinese social philosophy is its conspicuous lack of one word that we can readily translate as “justice.” On the other hand, might it not also be true that the entire Chinese philosophical tradition, distinctly marked by “this worldliness” and by an overriding concern about social order or good society, is fundamentally a perennial search for what we may call “social justice”? Practically all discussions that have bearing on the issue of justice or social justice are found in the Chinese articulations on a moral philosophy of political or social order. In this chapter, therefore, I shall not always seek to clarify the distinction between the two and will proceed to examine the ancient Chinese ideas of a good society by asking questions that are relevant to our concern about and definition of social justice.

Any careful reading of the ancient texts and reports of recent archaeological findings will nevertheless show that the rise of a “Chinese” consciousness did not develop without some religious dimension. It was long after Confucius’ time that secularized philosophizing became the dominant tendency among the thinking men, and emphasis became concerned almost exclusively with good government and what it could do for the people. Within this general tendency, understandably, there were competing opinions and assumptions. The formation of a distinctly Chinese view of a morally just society was, however, completed by the end of the Warring States Period (483–221 B.C.). I shall therefore limit myself to the philosophers before this date, which is commonly accepted as marking the end of ancient China.

Political Authority as the Center of Discourse

Early Chinese cities were distinctly characterized by a relative lack of social tension and underdevelopment of social stratification. David Keightley suggests that such characteristics, implying a somewhat nonpluralistic nature of culture and an optimist inclination in the Chinese worldview, perhaps reflected a favorable natural environment or climate in neolithic times that accompanied the development of early Chinese agricultural settlement and life (Keightley 1991: 48–49).

By the time of state building in the late Shang times (later second millennium B.C.)¹ certain Chinese “optimistic” views about man being capable of handling his own affairs had been well developed, perhaps as a result of the favorable natural conditions. The self-assurance is not immediately clear from archaeological evidence. But the fact seems to be clear that within cities, or, later, “city-states,” tension between the many and the few, or the demarcation between the wealthy and the poor, were not acute; the state seemed to be more concerned with how to possess as much labor as possible in the sense of good management (Keightley 1991: 49). Social control and social organization (often kinship organization writ large) were thus more important to the ruling group (class) than fighting nature for wealth or the accumulation of wealth per se.

Power/authority and its proper use took precedence over the amassing of wealth. The doyen of ancient Chinese history, K. C. Chang, would have this to say: “in ancient China, wealth was procured primarily through political power and was, as well, a necessary condition for the acquisition and maintenance of that power. Rulers could wield political power only by first establishing political authority” (Chang 1983: 124).

One does not wish to deny that in the process of state-formation and in consolidating its rule over other contending city-states, control of resources was also an important factor (Chang 1983: 107–20). But even more important, the exercise of authority or institutionalized violence was almost always accompanied by the manipulation of “communication with gods” and the control of “arts” and skill of “writing.” The intimate relation between such skills that carried religious overtones (especially rituals or shamanist “communications”²), and the political authority, demonstrated the importance of political control. Thus, rituals in general, and ancestor worship in particular, were constructed on the need to relate the transcendental (or, better, the *numinous*) to the human and were performed in the context of consolidating political power. It is no wonder that ancestor worship has commonly been characterized as sociopolitical in nature (Schwartz 1985: 20–27; Keightley 1991: 29–33). The centrality of sociopolitical philosophy thus is even reflected in early Chinese approaches to religion. The importance of political power, therefore, has to be taken into consideration in any discussion of the ancient Chinese idea of social justice.

The Sacred, the Transcendental, and the Foundation of Law

Before entering a more detailed analysis of ancient Chinese ideas of social justice, one may wish to consider, briefly, how the transcendental or, at least, the *numinous* sphere actually affected Chinese articulations of moral issues. Clearly, the idea of some personal god and afterlife was there. Most scholars, however, agree that there was a distinct lack of interest in or imagination about how the divine operated in this world. What Fingarette has to say about Confucian thought is generally applicable to other contemporary schools of thought: "The this-worldly, practical humanism of the *Analects* is further deepened by the teaching that the moral and spiritual achievements of man do not depend on tricks or luck or on esoteric spells or on any purely external agency" (Fingarette 1972: 3). The prominent place of "ritual" (*li*) as a secular virtue comprising all the essential teachings of the great philosopher shows how the "secularized" Confucian age reflected a residual attachment to something divine. But rituals were meant to be rituals,³ and beginning with Confucius, there arose a determined effort to be concerned only with what Fingarette calls "the stuff one has to begin with" (Fingarette 1972: 3). The combination of a premium on the ritualistic symbolism and an overriding stress on the sociopolitical had grave consequences: The ruling authority became increasingly interested only in social order and social control, even if it continued to believe that, in order to succeed, the rituals had to be meticulously enacted. The discussion on the proper exercise of authority to maintain a "just" society dwelled on the much humanized rituals as such and, thus, took precedence over: (1) the definition or analysis of the foundation, especially a transcendental one, of what must be understood as "justice" as such, and, (2) the articulation from the individual's angle of his own right or justified sense of need.

In other words, there was no real interest in whether "justice" was autonomous and dependent on a suprahuman order or the transcendental. The ancient Chinese was content that there was a "no-speaking" (Confucius, *Analects* xvii: 19; Waley 1938: 214) supernatural being or, more specifically, the Way of Heaven (*t'ien-tao*), which somehow guaranteed the functioning of nature.⁴ They, however, stopped short of seeking to define the nature and scope of power of this "being." Such efforts would be quite counterproductive.

As long as rituals were observed, then social order and harmony could be achieved. It was the rituals that actually became the center of Chinese social philosophy, taking up, on the theoretical level, the function of justice.

Confucian Attitude toward the Origin and Role of Law

This is a place to pause and ponder how ancient Chinese attitudes toward law were like. And this actually brings us to Confucius whose ideas about this matter are important. First of all, Confucius' articulation of the rituals deserves a greater

attention than what was just provided. I shall now discuss it within the context of his distrust of law, especially coded law, as such.

In his succinct discussions on the ancient Chinese theories of the origin of law (*fa*, *hsing*, and *li*), Derk Bodde (1981: 176) cites an interesting story from *The Book of History (Shang-shu)*. This story deserves quotation here:

The people of the [barbarian] Miao refused to adopt moral government; instead, they promulgated penal laws (*hsing*), comprising of five penalties and called them law. They used these penalties to kill innocent people. The administration of such penal laws was severe and no one could avoid being applied with them. The people, however, became deceitful. Confusion also followed, and no one was faithful. What was agreed on was often overturned later. The employment of penalty was threatening, and people therefore appealed to the Lord on High about their innocence. The High God (*Shang-ti*) was watching over the people, and noticed that the sacrifices no longer carried the fragrance of good virtue, but was full of ill smell because of penalties. The Splendid God (*huang-ti*) had pity over the innocence of the common people, and therefore exercised His power by killing all the Miao people, so that they had no descendants.⁵

The mythical account serves as an excellent reminder that Confucian intellectuals held law in great suspicion. The failure of sacrificial rituals to produce the “fragrance of virtue” is in perfect accord with the Confucian stress on rituals, against the use of, particularly, the coded law. Confucius’ objection to the promulgation of law by Tzu-ch’an (d. 522 B.C.) is famous (Bodde 1981: 177–78; Schwartz 1985: 326–29). For him, working to introduce a moral justification for social stratification and to give meaning to rituals, promulgation of written law would undermine his teaching that the ruling class, composed of morally superior people, could serve as the moral vanguard of commoners.⁶

Confucian stress on the moral significance of humanity (*jen*) as a part of the Confucian agenda for social life as a grand ritual, however, did not lead the Confucianists to refute the idea that legitimate penal law was necessary in human society (Schwartz 1985: 307).⁷ The great difference between Confucian and non-Confucian (especially the Legalist) perceptions of law lay precisely in the implication of law for moral behavior, which in Confucian thinking could only be achieved through knowledge and the performance of the rituals.

To summarize Confucius’ attitude toward law and rituals, I must point out the two aspects of his optimistic view about social order. First, Confucius must have shared the view that the law was for commoners only, whereas the rituals were appropriately meant for the “ruling class,” morally defined.⁸ Confucius also took the view that the morally upright officials (the ideal and moral gentlemen—*chün-tzu*) could influence the common people to act morally. Obviously, Confucius was quite optimistic about how the ethical conduct of the ruling class could bring about adequate moral influence to fashion an ideal society.

The optimism is uniquely interesting. What Thomas Metzger calls the “epistemological optimism” can be applied to the ancient Chinese approach to the foundation of justice (or “justification of justice”) (Metzger 1985–87: 66). The Confucian lack of interest in finding the “law behind positive law” reflected a fundamental optimistic view about nature and society.

In short, the Confucian attitude was representative of the main trend of thinking about the role of law in creating a satisfactory society. The distrust was paradoxically founded on an optimistic view about how moral persuasion could be relied on for the creation of a moral world order.

Naturally, one must ask whether this optimism, simple-minded as it was, will indeed prevent us from discovering any coherent thinking among ancient Chinese thinkers on why justice was possible. Also, we shall see that the optimism was taken over and consolidated into an important Mencian notion of the basic goodness of human nature.

Mencian Morality and the Idea of Righteousness

Mencius is the first person to address the issue of the foundation of justice or how man was capable of goodness. To me, his articulations of the idea of *yi* (righteousness) is most original and demonstrates a keen awareness of the complexity of problems related to justice in general and of the right relationship between an individual and his social environment in particular. To understand his concerns, one has to begin with an examination into the then-widespread notion that doing good was “profitable” (*li*). There is evidence that this was a popular notion among many ancient Chinese rulers, and was perhaps somewhat condoned by Confucius himself (Huang 1991: 144). In his important study of the issue, Huang Chün-chieh points out that it was widely held that the ruling authority chose to act morally because it was “appropriate” (*yi*^a),⁹ and, believably, would result in a good government. Thus, the whole justification (or at least “purpose”) of moral government was utility or profit. Confucius’ many utterances attest to this argument.

It is true that “utilitarianism” has been exclusively used to interpret the Mohist school of thinking, which is generally accepted as an intellectual reaction against Confucian philosophy of morality. However, one may ask if “utilitarianism” could not be used to explain the Confucian position in terms of an ultimate belief in the usefulness of morality in the construction of a just society. The use of “utilitarian” here is deliberate, because “utilitarianism” occupies an important position in any serious study of the concept of “justice.” My intention of introducing it here is to highlight the paradoxical position that Confucius adopted regarding the purpose of morality in the context of creating a just society, a dilemma that Mencius would soon have to work on.

While Confucius maintained a residual belief in a supernatural force—or even supernatural being—his interest was only in the *numinous*, the “holy,” and this is why he talked little about god, or even *tao*, and was evidently uninterested in its nature and content. In this way, Confucian moral teachings were actually predicated on the conception of an autonomous moral man. When this is compared with the Kantian notion of “autonomous will,” one sees that both almost were speaking of the same thing. What for Kant was “the source of all moral laws and of the corresponding duties” (Copleston 1964: 121) was man’s autonomous will; similarly, within the context of Confucian agnosticism, man’s de-

termination, strengthened by ritualistic performance, was really the very source of moral behavior and the resultant just action.

The problem is that Confucius did not follow through on his notion that autonomous man and his moral imperative, accompanied by the corresponding duty, could enable man to discover universal moral principles. Confucius did not see much use in further exploring the feasibility of man's moral absoluteness or rationality. Instead, he shifted to grounding man's ability for moral action on the utilitarian purpose of morality. Thus, a middle ground was struck to accommodate a somewhat ambivalent attitude toward the motivation (or origin) and purpose of morality or justice.

Confucius' ambivalence in his moral philosophy regarding the issue of moral absoluteness and of a pragmatic or utilitarian purpose of morality could not satisfy Mencius. Mencius cared more about the moral man as an individual. The well-known parable used by Mencius to illustrate how man was endowed with a commiserating mind and, therefore, was by nature good is well known (*Mencius* II, a, 6; Lau 1970: 82; Schwartz 1985: 167–68).¹⁰ His notion of the “four sprouts” (*ssu-tuan*, also translated into “four germs” or “four potentials”; *Mencius* II, a, 6; Lau 1970: 82–83) helps to explain how man's good nature could develop by and large without institutional sanction.¹¹ Mencius' articulation of this matter can be understood as his answer to Confucius' ambivalence toward the source of morality. In Mencius, we are provided with an explanation of how man's good potentials could serve as the foundation of morality. Compared with Confucius, Mencius was metaphysically more sophisticated.

Mencius pressed further for abandoning the utilitarian purpose of moral obligation. He systematically contrasted the idea of “righteousness” (*yi*) with that of “profit” (*li*). The chapter on “debates between righteousness and profit” begins the *Book of Mencius* and is central to the Mencian philosophy. This brought an end to the widespread utilitarian approach to political thinking that even Confucius had earlier implicitly condoned (Hsiao 1979: 154–55).¹²

The conception of “righteousness” is often placed in the context of the Confucian discourse on *jen* (humanity). Huang Chün-chieh has analyzed it splendidly by referring it to the notions of “individual duties versus social obligations” and “the purpose of morality”: The inevitable tension or conflict that must arise in between an individual's own sense of morality and the obligations the society imposes on the individual concerned Mencius. This is one area of moral philosophy that Confucius did not articulate systematically. For Mencius, external or institutional factors that could affect the individual's practice of moral responsibility created some kind of existential tension for the individual.¹³ The ability or determination to make the rightful or just choice is “righteousness.” To be righteous was to be able to come to a rightful judgment about how to resolve or how not to resolve the conflict.¹⁴

Mencius is uncompromising when it comes to the purpose of morality. Whereas Confucius occasionally seems willing to compromise—and, therefore, appeared to be ambivalent, for example, about hereditary rights versus merito-

cratic principle—Mencius was never unclear about the priority of the moral criterion (Hsiao 1979: 119–20, 165–66, 170–77). Such determination required a steadfast confidence in moral absoluteness.

The Mencian position about why morality or justice was necessary and how it could be founded on man's "good nature" (or moral potential) has dominated Chinese thinking on the issue. Because Mencius was traditionally accepted as the orthodox successor to Confucius, the slight difference between the two in the articulation of the foundation of justice has often been neglected.¹⁵ In all, Mencius paid greater attention than Confucius to the motivation of morality and sought to situate it on a universally accepted ground (Hsiao 1979: 155).

In Western thinking, the idea of "natural law" has been closely related to the discussion of justice and morality. Is it possible to argue that the Mencian conviction of a universal foundation of justice was similar to the "natural law" notion? It is worthwhile to refer to Joseph Needham who has pointed out that "natural law" as a conception in jurisprudence somehow existed in Chinese intellectual tradition (Needham 1956: 518–83), even though it did not develop into "laws of nature" in the Western sense. Other scholars have furthered his argument by pointing out that in the idea of justice there indeed was a "natural law" tradition in China (Bodde 1979; Creel 1970: 163–64).¹⁶

Between Dependence and Independence

Although Mencius' idea about morality and his somewhat individualist concern remained in the mainstream of Chinese thought, his "commiserating mind" has been understood more as an idea in political philosophy than a metaphysical notion. The injustice done to this metaphysical idea reflects how Mencius really was an exception, especially within the Confucian tradition. His most important intellectual opponent or, better, compatriot, was Hsün-tzu (fl. 298–238 B.C.). Hsün-tzu also sought to give an interpretation of man's capability of goodness: He begins with the moral inadequacy of man (who, according to him, is born evil). He then returned to the notion of rituals and secularized it by arguing that rituals were moral social and environmental influences. It is here that rituals were concretely understood as education (Schwartz 1985: 318). Education was important, and the use of external influences was often well intended (optimism again); the *li*¹⁷ thus remained a positive notion for individual moral upbringing.

Moreover, Hsün-tzu refrained from attributing any moral power to supernatural "heaven" and thus sharpened Mencius' thinking by furthering the idea of "natural law," however unclear and merely suggestive it was. The meaning and content of "natural law" remained little explored in the Chinese intellectual tradition.

Before we turn to the practical aspect of ancient Chinese ideas of social justice, it is necessary to include a brief discussion of Mo-tzu's views of a just society. Mo-tzu took a very utilitarian approach and made serious attempts to provide a foundation for social justice. The efforts by him and his followers are interesting mainly as a response to Confucius' somewhat accommodating ap-

proach to social hierarchy and hereditary privilege and his ambivalence about the realm of the transcendental. Mo-tzu argued for a religious foundation on which moral government, or a just social order, could be built. He was determined that hereditary rights should be abolished in favor of an equal social meritocracy. He preached that justice was necessary because this was a profitable thing to do. Further, Mo-tzu placed a great emphasis on the almost egalitarian application of moral action *toward the world*.¹⁸ For him, this “universal love” would benefit the greatest number of people—society at large. It is no wonder that Mohist philosophy is characterized as utilitarian. But this stock of utilitarianism is theistic. It is quite interesting to observe how Mo-tzu approached the issue of a just society by combining the idea of the transcendental¹⁹ and the idea of the profitability of moral goodness. The transcendental authority could be invoked to assist the moral man to complete what would be the most profitable thing to do.

Thus, Mo-tzu’s utilitarianism was different from the utilitarianism in British empiricist moral philosophy, which largely gives up on the notion of the transcendental. The Mohist approach is interesting. First, it was a reaction against the notion of man’s moral autonomy, as held by the Confucianists; and, second, it was a failed attempt to strike a middle ground between the dependent and independent approaches to justice, as we see in the history of Western approaches to justice (Forkosch 1968: 652–59).

SOCIAL JUSTICE

Discussions on social philosophy or social justice in ancient China often centered on the just or moral exercise of political authority. The premise was that the ruling class should act morally and that the commoners (the ruled) would then follow. A just society must satisfy the moral and material needs of the common people. The great irony, thus, is that there was a distinct lack of interest in approaching “social justice” from the viewpoint of the poor or the oppressed, even if the entire philosophy could be characterized as an exposition on how to pass out justice to the impoverished or the oppressed.

Equitable Distribution

Following the above discussion on the political aspect of social control in Chinese thinking about a “just” society, one immediately sees that the idea of distribution must have been an important concern. One may also ask how the Aristotelian conception of “distributive justice” would fare in the Chinese context.

First, both Confucius and Mencius shared the idea of “equitable distribution” (Hsiao 1979: 154).²⁰ Social hierarchy was an accepted norm and reality, but the gentlemen should play the role of moral vanguards. The first duty of the government was to “enrich the people,” and then to distribute or manage the provision equitably. The emphasis, thus, was on how to govern, and the corollary was the equitable distribution of material goods (Hsiao 1979: 110–11). “He is

not concerned lest his people should be poor, but only lest what they have should be ill-apportioned," said Confucius (*Analects*, xvi: 8; Waley 1938: 203).

The emphasis on distribution is also evident in Mencius. The first part of the chapter "T'eng-Wen kung" of *Mencius* touches on the social aspects of what Mencius defines as "politics of humanity" (*jen-cheng*). One paragraph is cited here to give a general flavor:

Humane government must begin with land demarcation. When boundaries are not properly drawn, the division of the land according to the well-field system and the yield of grain used for paying officials will not be equal. For this reason, despotic rulers and corrupt officials always neglect the boundaries. Once the boundaries are correctly fixed, there will be no difficulty in settling the distribution of land and the determination of emolument (*Mencius* III, a, 1; Lau 1970: 99, with modification).

The fair distribution is for both Confucius and Mencius a condition of general prosperity. Mencius is even more emphatic on how to increase the wealth of the people.²¹

The concern for equal distribution received less attention by Mo-tzu. Nonetheless, as characterized by Benjamin Schwartz, this idea nonetheless was taken for granted in Mo-tzu's studies on material goods and their purpose, and for Mo-tzu, "the problem is thus not that of the 'growth of the forces of production' but the task of distribution" (Schwartz 1985: 156).

The idea of equal distribution received a greater and more systematic treatment in Hsün-tzu. "It is the lord of men who is the essential agency for controlling the allotments and assignments (*fen*) [in society]," said Hsün-tzu (*Hsün-tzu*, 10 (Fu-kuo); Hsün K'uang 1965: 4; Knoblock 1988: II, 123 with modification). Continuing the Confucian emphasis on enriching the people, Hsün-tzu placed the notion in a more realistic context of how this could actually be carried out (Hsiao 1979: 186-88, 192). The idea of *fen* probably best approximates the idea of "equity" (Knoblock 1988: I, 251). Hsün-tzu's analysis has influenced many philosophers after him. The *Book of Kuan-tzu* is a good example: *Kuan-tzu's* definition of righteousness (*yi*) is reflective of what is said of Hsün-tzu: "righteousness is each getting what is [inherently] appropriate" (*Kuan-tzu*, 36 (Hsin-shu); Kuan Chung, 1966: 221). Such a definition of the idea of *yi* is almost Aristotelian and serves to explain why justice as a term was translated into "cheng-i" (lit., "correct and righteous," or "correct righteousness") when it was first introduced into the Chinese language.²²

The *Book of Kuan-tzu* appeared toward the end of the period we are concerned with. This is a time, according to Kung-chuan Hsiao, when the more complicated idea of "social equality" began to appear (Hsiao 1979: 161n., 189, 253). The accompanied development was a strengthened concern about equal distribution or its management, often at the expense of production.²³ The "Legalist" in the *Discourses on Salt and Iron* says it well in the first century B.C.: "Wealth lies in the technique of legal calculations (management), not in physical toil" (Huan

K'uan 3 (T'ung-yu) 1958: 4; Gale 1931: 18, with modification). After a long grappling with what "benefit" (profit) was, the Han Confucian intellectual, Huan K'uan (fl. first century B.C.), the author, returned to the basic moral notion that effective government was the way to an orderly society. Coached in Legalist terms, the message nevertheless reflected the managerial orientation characterizing earlier thinkers. Equitable distribution is this legalist/managerial idea in action.

The moralist approach to social philosophy must necessarily handle the idea of good government from the viewpoint of meritocracy in terms of equality of opportunities. Clearly, this goes beyond the procedural idea of equity and involves a whole spectrum of ideas to which we must now turn.

Equality: Equal Opportunities

"Equal opportunity" is a conventional definition of *justice*. In this section, I will examine how "equality of opportunity" may have been understood by ancient Chinese thinkers.

As mentioned in the last section, Kung-chuan Hsiao considers that the idea of "equality" (in a sociopolitical sense) perhaps made its appearance only after Confucius and that both Confucius and Mencius continued to allow heredity as legitimate (just) in the ideal society (Hsiao 1979: 253, but also Schwartz 1985: 282-83). It is my opinion that both Confucius and Mencius were simply being realistic about the hereditary social hierarchy (Schwartz 1985: 70). However, they argued forcefully that only a moral criterion could be relied on for constructing a healthy social stratification. Speaking from the viewpoint of the ruling class, Confucius addressed the issue of equality in terms of moral influence and privilege as well as material rewards. His thesis is that education (rituals) could be made available to all and that all would thus have equal opportunities for office.

Equality in a moral sense has a similar significance in Mencius' thinking. Although he was satisfied that hereditary emolument should continue, he was concerned that a hereditary social hierarchy could be abusive. All morally qualified men could become sages and should have access to position.²⁴ Even regicide could be tolerated if the ruler did not live up to the moral standard. This part of Mencius' thinking has been much discussed; clearly, his attention focused on the equality of man's potential for practicing morality, including the ruler. Thus, one could say that, for both Confucius and Mencius, equality of opportunities could only have meaning within the framework of moral philosophy.

In Mo-tzu, one finds less concern about the idea of heredity. Mo-tzu was able to advance an egalitarian social philosophy founded on utilitarian principles. However, the problem of political equality certainly was more complicated than the somewhat utilitarian egalitarianism that Mo-tzu was advocating. Let me explain.

What Mo-tzu sought to propose was an answer to the crucial question of how social equality could work within the context of social hierarchy. How does one achieve genuine equality in a moral sense within a world of division of labor and of necessary social stratification? This is a question that all ancient Chinese thinkers shared, but I think it was Mo-tzu who first systematically worked on it.

Mo-tzu's practical approach to the social problems of his times is interesting in terms of his articulation of social equality and equal opportunities. First of all, Mo-tzu held a simple belief that a well-"unified" social structure in which all individual interests coincided with the general interest of the society would safeguard the needed division of labor and social hierarchy. Once such a social structure was created, equality could be guaranteed in terms of roles; differences in individual talents and power would thus become irrelevant in terms of the roles they played (Schwartz 1985: 163).

And yet, Mo-tzu was not advocating social stratification based strictly on occupation or division of labor. In other words, the modern liberal ideal of fair competition and equality of opportunity in the sense of reward for merit and careers open to talent was not what Mo-tzu was striving for; instead it was again within the framework of moral philosophy that he sought to define his meritocracy. Mo-tzu, however, seemed to believe that there was a conflict between the reality of occupational division and the ideal of moral meritocracy. His egalitarianism was designed to solve the conflict: While morally qualified persons should be in high positions,²⁵ there was no reason that they were justifiably to rule without physical labor. He has a lot of comments on how the rulers should actively engage in the works that otherwise could be delegated to subordinates. Hsün-tzu was therefore not without a point in denouncing Mo-tzu: "Whether it be [the ruler] grandly possessing the empire or [the feudal lord merely] having one small domain, if they must do everything themselves before it is properly done, then no greater toil or burden can be imagined. If that were to be the case, the lowliest servants would not trade their places for the power and position of the Son of Heaven" (*Hsün-tzu*, 11 (Wang-pa); Hsün K'uang 1965: 8; Knoblock 1988: II, 158, with modification). Thus, Mo-tzu could be said to have raised the issue that is dear to a modern philosopher exploring the meaning of equality, even though he returned to the belief common to his contemporaries that equal opportunity meant moral meritocracy (Schwartz 1985: 153-54) and proposed no satisfactory answer to the dilemma.

Equality in moral meritocracy can be at odds with equality in the practice of moral life within the social nexus of human relations. Ideally, moral meritocracy in action will guarantee the perfect exercise of moral human relationships. Confucius approaches the issue of equality and harmonious human relationships through the principle of what may be characterized as "reciprocity"²⁶ (Schwartz 1985: 70). While moral meritocracy is the foundation to social ranking or hierarchy, the principle of "reciprocity" should provide an answer to how to carry out differentiated treatment of the people one interacts with in social life. Rec-

iprocity directs one's behavior in such a network of human relationships by informing one about what is just or "equal" in that complex of differentiated treatments.

The long tradition of kinship organization and the state-society continuum as family writ large provided a point of reference when it came to the exercise of reciprocity. This is why social hierarchy was eventually less important than "social circles" in the practice of social justice.²⁷ To sustain a society whose structure and stratification are based on moral criteria, equal opportunity in the usual sense (meritocracy of talent)—and, actually, equal distribution—have no real meaning; once the basic livelihood of all people is guaranteed (see next section), "equality of opportunities" beyond equality of moral potential is also meaningless.

This is to say that the distribution of (especially) material goods should be directed by the principle of reciprocity, according to the roles that each individual plays in the network of social circles. On the surface, this may look like inequality. It also sounds like running counter to such ideas as basic human rights. However, the consideration is based on what is assumed to be man's natural instinct as understood by Confucius and Mencius. Mo-tzu was not happy with such an approach of differentiated "equality." But his objection did not prevail. Later, in Legalist writings, one sees an emphasis placed on the short-term usefulness of moral reciprocity, even though, ultimately, the *fen* would cease to be defined in terms of reciprocity. In general, it is clear that the predominant ancient Chinese idea about human relationships relied on an idea of "moral equality" that was strictly humane and that was natural to the assumed instinct of man as a social animal.

In short, equal opportunity meant "equal moral potentials." This idea provides a justification for the reality of social hierarchy, but it does not satisfactorily solve the problem of a just management of social relationships. Man exists in different social circles, and ancient Chinese thinkers saw that an idea must be proposed to make social equality sensible within this framework. The idea of reciprocity is therefore proposed to direct the management of the differentiated treatment of people in the complex social setting. The application of reciprocity in the equitable distribution of material goods also makes reciprocity realistic and meaningful. Thus, social equality as a definition of justice finds its Chinese expression.

The Right of Individuals and the Principle of Equity

The moral approach to equality led to a couple of important, if somewhat secondary, arguments that I propose to examine in this section. The first argument has to do with individual right in the context of equal opportunity. This is of course an important subject in Western discourse on equality. Hsün-tzu and, later, the Legalists were the only ones to have addressed this issue in a more systematic, if negative, manner.²⁸ Whereas Confucius and Mencius singled

out moral cultivation as the central part of social philosophy, and Mencian thinkers went further in entertaining the paradoxical notion of “moral rectitude even when alone” (*shen-tu*; Huang 1991: 84–89), Hsün-tzu apparently did not find such concerns meaningful. Hsün-tzu cannot award the individual any moral significance or right more than his entitlement of a position in society and considered that “beyond political life there can be no area of personal ethical life” (Hsiao 1979: 193). This notion was followed by the Legalists, whose concern for a centralized state furthers this notion. They contended that individual right made up only a secondary factor in the sociopolitical equilibrium between the state/society and the individual. Equal opportunity as an ideal of political or social justice thus became submerged under the emphasis on state authority.

The second argument has to do with the role of Confucian “humanity and righteousness” in the exercise of justice or law. One of the greatest insights in the history of the discourses on justice is to admit the complexity of human conditions and to allow a degree of discretion in the application of the law—articulated by such thinkers as Plato and Aristotle and, subsequently, becoming the “equity” principle in the English and American common law (Aristotle, Bk. V: ch. 10; Konvitz 1968: 148–54). The Legalist philosopher Han Fei tzu (d. 233 B.C.) gave a preliminary consideration to this, again within the context of grappling with the Confucian discourse on moral social order, and decided that humanity and righteousness had no place in the realm of rigorous law or justice. Although the Legalists generally did not enter any systematic examination of the foundation of justice (see Part I of this chapter, “Justice as a Problematic”), it is evident that their view about law was more than instrumentalist; the Legalists clearly believed that the perfect world was one in which *legal* justice prevailed. They considered morality (in the form of “humanity and righteousness”) was but a step toward just government/society: “In early antiquity, people loved their relatives and were fond of what was their own; in the middle era, they elevated the worthy and talked of moral virtue; and in later ages, they prized honor and venerated office” (Duyvendak 1963: 227). “To give alms to the poor and the destitute is what the world calls a humane (benevolent) and righteous act; to take pity on the common people, and hesitate to inflict censure and punishment on criminals is what this world calls an act of grace and love. To be sure, when the ruler gives alms to the poor and destitute, men of no merit will also be rewarded; when he hesitates to inflict censure and punishment upon criminals, then ruffians never will be suppressed” (*Han Fei tzu*, 14 (Chien, chieh, shih ch’ en); Han Fei tzu 1974: 248; Liao 1959: I, 127, with modification). Thus, for Han Fei tzu, “what preserves the state is not humanity and righteousness” (*Han Fei tzu*, 47 (Pa-shuo); Han Fei tzu 1974: 975; Liao 1959: II, 254). The absolutist conviction about law and justice left no room for humanization or “loving kindness” (Hebrew *yosher*; Konvitz 1968: 151).²⁹ The consequence was disastrous for the development of the idea of social justice.³⁰ Indeed, there has been a misplaced accusation against Confucian thought concerning justice, namely, that Chinese legal thinking left too much

room for discretion. The Confucian philosophy of justice actually could have developed the notion of creative compassion so that the legal system did not have to rely heavily on penal codes. The intellectual history of Chinese speculations on justice was such that the Legalists, in their fervor to combat the Confucian moralist legal thinking, stopped short of considering this important aspect of justice that has served as a cornerstone in Western legal thinking. The irony is that because of the Confucian emphasis on the humanist approach to justice, those capable of delving into the depth of legal thinking came out defending the absolute rigor of law and its uncompromising applicability.

The significance of the Legalist refusal to approach justice from the moral viewpoint, perhaps out of a need to fight the Confucian tradition, to me not only forestalled the possibility of the idea of “equity principle” from developing but also probably accounted for the failure of the idea of equality or “equal opportunity” to go beyond its moralist parameter. In any case, and this is not for me to pass a judgment on, the discourse of social justice was kept within the context of ethics, and any attempt to study the rigor of law and its compassionate potential became stillborn.

“Enrich the People”

When asked about the achievements of Tzu-ch’an, Confucius singled out four virtues that Tzu-ch’an possessed. Of the four, one was “in enriching the people, he was abundantly kind” (*Analects* 5: 15; Waley 1938: 111, my translation). This says a lot about Confucius’ approach to social philosophy. However, Confucius was basically concerned with the moral rectitude of individuals, even if it is always placed in the context of good social order. It is Mencius who placed the greatest emphasis on the responsibility of the ruling class in providing the people with a satisfactory livelihood: “This is the way (*tao*) of people. Those with constant means of support will have constant hearts, while those without constant means will not have constant hearts. If they do not have constant hearts, there is nothing they will not do in the way of self-abandonment, of moral deflection, of depravity and of wild license” (*Mencius*, III, a, 3; Lau 1970: 97, with modification). The same attitude is shared by Hsün-tzu who sometimes even went beyond Mencius in terms of “enriching the state” (here, “state” reads as “people”; Hsiao 1979: 187). For the way to a good state/society was to “regulate the use of goods through the rites (*li*), and provide the people generously through administrative measures” (*Hsün-tzu*, 10 (Fu-kuo); Hsün K’uang 1965: 119). He could be quite specific about implementing such ideas in actual policy; there are too many examples to cite to demonstrate.

Mo-tzu’s assumption remains the same (see above), although he was more directly involved in figuring out how material goods could be distributed equally through universal “love,” which was the cultivated feeling of wishing for the greatest benefit for the greatest number of people.³¹

It was in Kuan-tzu that we see an even more comprehensive treatment, almost

exclusively at policy level, of the state management of an ordered society. He systematically looked at the problem of productivity, one that few other Chinese thinkers at the time paid much attention to (see above). But even so, management remained his central concern, and his philosophy was utilitarian: many quotations could be culled from the book that echo Mencius' message. While scholars have generally concentrated on Kuan-tzu's motivation—which was to elevate the ruler's position and his control³²—his approach to the ordered (just?) society remained within the mainstream of ancient Chinese social philosophy of "enriching the people." In fact, the Legalists after him employed the same argument.

The problem with this type of moral philosophy is how we can reasonably relate it to the concept of "social justice." Again, the articulation of how best to "enrich the state" or "enrich the people" reflected the concern with how an ordered society could be constructed that would provide the greatest benefit to the people. Whereas Confucian thinkers began with a compassionate consideration and appealed to the moral vanguards (the ruler and the ruling "gentleman" class) to provide the people with adequate livelihood, Kuan-tzu and, later, the Legalists, believed that satisfying the needs of the people was due, not so much to compassion, but to the utilitarian results of satisfying those needs. Social justice, ironically, for the ancient Chinese thinkers was thus only realizable from the initiative of the ruling authority.

The ideal result is envisioned in the famous passage from the *Records of Rites* (*Li-chi*), which is worth quoting at length:

When the Great Way was in practice, a public and common spirit ruled everything under Heaven; men of virtue and ability were selected; sincerity was emphasized and harmonious relationships were cultivated. Thus men did not love only their own parents, nor did they treat as children only their own children. A competent provision was secured for the aged till their death, employment was given to the able-bodied, and a means was provided for the upbringing of the young. Kindness and compassion were shown to widow, orphans, childless men, and those who were disabled by disease, so that they all were sufficiently maintained. Men had their proper work and women had their homes. They hated to see the wealth of natural resources unused [so they develop it, but] not for their own use. They hated not to exert themselves [so they worked, but] not for their own profit. In this way selfish scheming was thwarted and did not develop. Bandits and thieves, rebels and trouble-makers did not show themselves. Hence the outer doors of houses never had to be closed. This was called the Great Community (or Great Harmony) (*Li-chi*, 7 (Li-yun), 1; Legge 1966: iii, 364–66; Hsiao 1979: 125).

It is interesting to note that this paragraph actually sounds somewhat utopian socialist: The "entitlement" was not spelled out in individual terms, and the dominant tone is that such a utopia was the responsibility of the rulers to effect; the right or even duty of the individual as a moral being is irrelevant in this landscape.³³ There is no question that, for all of the Confucian emphasis on an individual's moral upbringing as the beginning of a good society, the ultimate

picture is holistic; and the contribution of the moral vanguards, in their positions as moral cum political authorities play the leadership role. The people become part of the general scene because their leaders have provided them with their needs, moral and material.

A few words are in order on *social welfare* and the idea of *reciprocity*. Clearly there is some incongruence between the two notions. Social welfare as a part of the social justice conception was actually what “enriching or nourishing the people” was about. One could even say that all “common people” are socially disadvantaged and that it is the government that should shoulder the responsibility. Since the state is a big family and all people are its children, the notion of reciprocity in its peculiar way of achieving social justice becomes feasible. Similarly, an individual’s responsibility toward members of his circles, from the closest to the farthest, can theoretically also be defined or based on the same principle of a kinship network.

CONCLUSION

Although justice as such was not an independent discourse within the Chinese intellectual tradition, and there is no word in the Chinese language that we can readily translate into “justice,”³⁴ one has to allow that justice was an important part of Chinese moral philosophy. In this chapter, I have simply placed the discussion of Chinese ideas of justice within the context of how ancient Chinese thinkers articulated on how to construct a good, harmonious—and, ultimately, moral—society. In fact, one may as well argue that Chinese concerns about justice have been almost exclusively about the idea—and, especially, the practice—of social justice.

The first conclusion that one may draw from the discussions above is that there was a prevalent distrust of law as such. Instead, a good and just society, as perceived by ancient Chinese thinkers, should only be founded on the ideals of “rituals.” Rejecting the concept of a transcendental being or power early on, these thinkers, the Confucian ones in particular, have stressed the “sacredness” of rituals and have argued that through the practice of rituals, man’s moral instinct will be realized in the world he finds himself in.

Part of this concept of a good society is the Chinese disinterest in whether there really was a law behind laws. Whereas Chinese thinkers vaguely accepted a natural law idea, this probably was not more than a rationalist justification of the applicability of universal standards to life and the political process. Beyond it, there was no further interest in examining the nature or content of this universal foundation.

From the beginning, Chinese political life was dominated by how to effect a benevolent government. The power and influences of the rulers and their elite officials were trusted with almost all moral authority, and it has been accepted universally that only the ruling vanguards with their moral power could create a perfect social and political order. All philosophical discussions that had a

bearing on the issue of social justice reflected this premise of the moral omnipotence of the ruling authority. The Legalists pushed this notion to its highest plateau and brought about the realistic interpretation of “rituals” by placing them in the context of penal law and the constraining power of social and political institutions (bureaucratic organization).

As a consequence, discussions on how to effect a good, or just, society seldom touch on the individual’s moral responsibility or right. Mencius did seek to provide a metaphysical justification to man’s ability to be moral, and attacked the problem of the inevitable conflict between an individual’s needs and his societal responsibility. In that sense the idea of “righteousness” is somewhat individualistic. In that sense, too, Mencius is quite exceptional. He also brought an end to Confucius’ pragmatic, or utilitarian, approach to morality.

The emphasis on the priority of management over productivity necessarily meant that distribution was important. Obviously, distribution was central to all discussions of moral social philosophy. Nonetheless, the idea of equality or equitable distribution did not begin with the distribution of material goods; rather, it was equality in human moral potential that came to dominate Chinese thinking about a good social hierarchy. Equality also meant that the distribution of material goods and man’s moral commitments should operate within the framework of kinship circles (the key term being *reciprocity*), which was juxtaposed to social hierarchy. Universal love or love without discrimination was to be rejected.

A moral government takes it upon itself to provide the people with basic needs. The ultimate responsibility of a moral government is to enrich or nourish the people. Once the moral social hierarchy is constructed, and the basic needs of the people are met, then equality founded on social circles will result in a utopian-like society of “Great Harmony.” The poor and the oppressed should always take comfort that their morally superior leaders will always have their needs in mind; the problem with such a discourse on social justice in ancient China was, of course, its practice. But then an examination of this issue requires another lengthy study.

NOTES

1. For a succinct summary of the state formation, see David Keightley 1983: 523–63. See also Schwartz 1985: 37–38 for a criticism of Keightley’s association of “secularization” with the rise of kingly power. Schwartz’s reservation is well taken, but does not deny that the Chinese state really rose at the time.

2. How important shamanism was for the Shang rulership is a point of debate. Schwartz 1985: 25–27, citing Maspero, appears to think that this was of no great significance in our understanding of ancient Chinese religio-political life, but Chang (1983: 44–47) gives it a more distinct position.

3. In a famous incident in the *Analects* (III, 17; Waley 1938: 98), one sees how Confucius approached rituals: “Tzu-kung wanted to do away with the presentation of a

sacrificial sheep at the Announcement of each New Moon. The Master said, Ssu (name of Tzu-kung)! You grudge sheep, but I grudge ritual.' Obviously, both Confucius and Tzu-kung did not think that the sacrifice could actually result to anything, but it was the ritual that was important.

4. Discussions of the idea of justice in the West often cite the famous appeal to the "immutable and unwritten laws of Heaven" by Sophocles' Antigone against Creon as a good example of the Western search for the foundation of positive law. Similar appeals, of course, also existed in Chinese thinking. In remarking on the failure of the "heavenly way," Ssu-ma Ch'ien (145–90 B.C.), the Grand Historian, had this to say:

Some people say, "It is Heaven's way to have no favorites but always to be on the side of the good man." Can we say then that Po Yi and Shu Ch'i were good men or not? They piled up a record for goodness and were pure in deed, as we have seen, and yet they starved to death. . . . Robber Chih day after day killed innocent men, making mincemeat of their flesh. Cruel and willful, he gathered a band of several thousand followers who went about terrorizing the world, but in the end he lived to a ripe old age. For what virtue did he deserve this? . . . I find myself in much perplexity. Is this so-called Way of Heaven right or wrong? (translation Watson 1969: 13–14)

I do not think, however, that this quotation has been often cited, throughout Chinese history, in relation to discussions of justice or social philosophy.

5. Sun Hsing-yen 1966: ch. 27 ("Lü-hsing"), 522. It is important to note that chapter 27 belongs to the "modern text" and is believed to be a later (post-Confucian) interpolation. Its ideas, therefore, reflected much later opinions, though clearly with Confucian influences.

6. Confucius was seeking to maintain the social structure that was visibly declining. He was not totally dissatisfied with the tradition but tried to develop a general moral philosophy to interpret and justify the social hierarchy. Hsiao Kung-chuan detects a strong traditionalist tendency in Confucian moral and political philosophy. We shall see more below. Incidentally, for the beginning of legal codes in Chinese history, see also Creel 1970: 161–64.

7. The influence of Confucianism on Legalist philosophy is briefly discussed in Hsiao 1979, 66. The shift in the Confucian attitude to concede that law was a necessary evil is noticed by Ch'ü T'ung-tsu 1961: 267.

8. I have used "class" here for convenience. In the *Records of Rites (Li-chi)* it says: "The rituals do not extend down to the common people; the punishments are not applied upwards as far as the officials." The *Records of Rites* was compiled in the third and second centuries B.C., containing materials of earlier times and is generally regarded as a Confucian text. See also an interesting short essay on the comparison between Confucian rituals and Western *jus* by Wang Te-mai (1989).

9. This word has been subsequently used interchangeably with "righteousness" (also pronounced *yi*).

10. "Commiserating mind" (compassion, *ts'e-yin chih hsin*) is also expressed as *pu-jen* (cannot endure [the sufferings of others]). See Hsiao 1979: 149–50.

11. Roger Ames (1991: 143–75). See also Irene Bloom (1994: 19–54).

12. Mo-tzu's "utilitarianism" predated Mencius'.

13. Thus, followers of Mencius developed the idea of *shen-tu* (care about moral aptitude even when one is alone). See Huang 1991: 81–89.

14. Morton A. Kaplan: "The very stuff of tragedy occurs when the vital needs of a particular individual are in irreconcilable conflict with the needs of society. Must life be

sacrificed for honor? Should one commit treason to save one's life? Secondary or unimportant conflicts may be resolved one way or another and forgotten. But the great conflicts are inherently insoluble." (See Kaplan 1976: xvii.) The author goes on to say: "There is only one escape from this dilemma. That escape is to modify the environment in such a way that the two sets of needs cease to be irreconcilable. Thus, in most social situations, there is an underlying strain toward social change. But as change occurs, the society itself changes. The ways in which man and his needs are viewed change also" (xvii). The solution as proposed would be acceptable to ancient Chinese philosophers who, however, would place the emphasis on whom to initiate the change: theoretically, the ruler. In historical reality, however, the solution is to press the individual to give up on his individualistic needs.

15. Mencius talked little about rituals and paid little attention to such matters as characterized by Fingarette as "sacred." Schwartz does detect certain differences Mencius developed against Confucius. See, for example, Schwartz 1985: 279, 282.

16. Incidentally, a permanent law behind the positive laws was a conception that Legalists, for all of their efforts to stress its importance, did not adopt. See Bodde 1981: 181.

17. Comparison between this argument with Plato's idea of educational necessity in his *Laws* is enlightening. See Schwartz 1985: 207. A few words about the idea of "ritual": Clearly, once Hsün-tzu secularized this conception, it was only natural that later thinkers would give it a meaning as simple as "social norms" or even "regulations." The *Kuan-tzu* is a good example: The book uses *li*^a and law almost interchangeably. See Hsiao 1979: 333. It is therefore very easy for us to simplify the idea of *li*^a as primitive law. See William Alford's critique on Roberto Unger's misreading of *li*^a (1986: 915-72).

18. Hence, "love" (*ai*), as distinct from Confucian *jen*, which is less emphatically societal than personal moral perfection. See Schwartz 1985: 145-50.

19. Mo-tzu's view about the transcendental is somewhat Augustinian: The realm of God does not allow the existence of "fate." See St. Augustine's *The City of God*, Bk. V, chaps. 3-7.

20. *Equity* here is used in the general meaning of "treating equals equally and unequals unequally but in proportion to their relevant difference," as formulated by Aristotle. See Stanley I. Benn and R. S. Peters 1964. Later, I shall discuss the idea in greater detail.

21. Hsiao 1964: 154. Here, Hsiao makes it clear that equal distribution was less important in Mencius' ideas about good government. See also Chan 1963: 70 for Mencius' casual remark on the natural inequality of things.

22. See Hsiao 1979: 355-62 for a full discussion of Kuan-tzu's social philosophy. Rickett (1985) unfortunately does not provide an introduction.

23. Hsiao 1979: 461, citing later Mohists. And even if productivity is emphasized, it is to "enrich the state." See Hsiao 1979: 358.

24. Mencius does consider that some are so ill endowed that they cannot even realize their good potential. He would in this sense certainly find John Rawls' theory of justice incomprehensible. Confucius was realistic and said that some are so ignorant that they cannot be educated. He proposed no remedy to such a social ill.

25. In this he was essentially similar to Mencius whose notion was that the ones who labored with their minds should rule, while those who labored with their physical strength should be ruled. See Hsiao 1979: 254.

26. The English term *reciprocity* has a strict definition in philosophical discussions

on justice and is not related to what I am concerned with here. Also, "reciprocity" is generally used as a translation of Confucius' *shu* (Chan 1963: 16–17). Here I am using *reciprocity* in a broader sense.

27. I have benefited from discussions with Professor Cho-yun Hsu of the University of Pittsburgh on this point.

28. Kung-chuan Hsiao often equates the idea of equality with democracy. This is of course a useful but somewhat simplistic assumption. Mencius has been labeled as the first Chinese theoretician of democracy (because of his idea of legitimate regicide), but Mencius did not really enter a systematic examination of equality within the context of the political process.

29. Han Fei tzu's elevation of law and justice relied exclusively on law (esp. coded law), and his denunciation of "humanity and righteousness" does not exactly mean that he refuted the Aristotelian notion of the "equity principle." In a sense, systematic investigation of this issue of "equity principle" was never carried out in the Chinese intellectual tradition, although in practice it is clear that discretion by officials executing the law was so great that one can almost see that the law and, hence, justice, was to be interpreted totally at the discretion of the officials. To me, this is precisely because the equity conception was not adequately and sufficiently explored and defined.

30. The following is a telling example: "Once, when Ch'in had a great famine, Marquis Ying petitioned His Majesty and said: 'The grass, vegetables, acorns, dates, and chestnuts in the Five [imperial] Parks are sufficient to save the people. May Your Majesty give them out?' In reply King Chao-hsiang said: 'In accordance with the law of our country the people shall be rewarded for merits and punished for crimes. Now if I give out the vegetables and fruits of the Five Parks, I will in so doing reward men of merit and no merit equally. To be sure, to reward men of merit and no merit equally leads to disorder' " (*Han Fei tzu*, 35 (Wai-ch'u shuo, yu hsia); Han Fei tzu 1974: 771; Liao 1959: 126).

31. See an interesting discussion of the meaning of "love" as used by Mo-tzu in Schwartz 1985: 145–51.

32. Hsiao 1979: 322–33. Hsiao clearly thought that Kuan-tzu was simply addressing the issue of how to strengthen the ruler's control and riches ("enrich the state," equating ruler with state). In any case, Kuan-tzu laid out a comprehensive treatise on how best to "give people ease and happiness," to "enrich and ennoble them," to "give them security and to preserve them," etc. Not counting the purpose of such policy considerations, Kuan-tzu's social philosophy was not very dissimilar to that of Mencius and Hsün-tzu.

33. There has been a lot of speculation, certainly not without foundation, that this paragraph is an interpolation of non-Confucian writing or at least does not reflect orthodox Confucian social thinking. Still, the Confucian ideal world is premised on the total integration of individuals into the overall welfare system, each contributing his share.

34. "Justice" is not found as an index item in any of the four major general works on Chinese thought: Wm. Theodore de Bary (1963), Chan (1963), Hsiao (1979), and Schwartz (1985). In Creel (1970), we do find a whole chapter dealing with Western Chou (ca. 1100–771 B.C.) "justice" in the context of a discussion on government. But Creel's interest is more in the administrative side of the law.

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Part IV

Social Justice and Reform in the Ancient World

Social Justice in the Ancient Near East

RAYMOND WESTBROOK

In this chapter I will deal mainly with the sources in cuneiform from Mesopotamia, dating from the third to the first millenium B.C.E., but I will also consider the sources in cuneiform from Syria and Anatolia in the second millenium, and the Hebrew Bible as evidence of ancient Israel in the first millenium, since all these societies shared a similar social and political structure, a common legal tradition, and a common view of social justice.¹

The societies of the ancient Near East were organized hierarchically. The basic unit was the household, headed by a *paterfamilias* and containing wives, children, and slaves as its subordinate members. Above the households of the citizens lay those of the nobility, above them that of the king, and above the king the gods, whose pantheon itself was conceived in terms of household and hierarchical structures.

The structure of the society is illustrated by the native use of the term *slave*.² While it denotes real slaves, that is, unfree persons, who were of course at the bottom of the ladder, the term was also used relatively to describe one's relationship to any hierarchical superior. Thus, a free citizen was called a slave of his king, and both were slaves of the gods.

The concept of social justice in such a society was not at all one of equality, nor was it identified with the relief of poverty as such, given that large sections of the population existed at subsistence level. Social justice was conceived rather as protecting the weaker strata of society from being unfairly deprived of their due: the legal status, property rights, and economic condition to which their position on the hierarchical ladder entitled them. The ideal was expressed by such phrases as "that the strong not oppress the weak, that justice be done to

the orphan and widow’’³ or “the orphan was not delivered up to the rich man, the widow was not delivered up to the powerful man, the man of one shekel was not delivered up to the man of sixty shekels.”⁴

A whimsical tale entitled “The Poor Man of Nippur” (Cooper 1975: 170–74), although fiction, is revelatory of Mesopotamian attitudes as to the sort of poor and weak who were embraced by such high-sounding ideals:

There was a man, a citizen of Nippur, destitute and poor,
Gimil-Ninurta was his name, an unhappy man,
In his city, Nippur, he lived, working hard, but
Had not the silver befitting his class,
Nor had he the gold befitting people (of his stature).
His storage bins lacked pure grain,
His insides burned, craving food, and
His face was unhappy, craving meat and first-class beer;
Having no food, he lay hungry every day, and
Was dressed in garments that had no change. (I 1–10)

Poverty, then, is relative. Our hero was a free citizen down on his luck, who could no longer maintain himself in the style to which his status entitled him.⁵ The story then goes on to tell how, as a result of his condition, he suffered oppression at the hands of the powerful.

His solution to his hunger is to sell his coat in exchange for a goat. He decides, however, not to eat the goat himself, because it would be no feast without beer and because his neighborhood friends and family would be angry with him for not inviting them. Instead, he presents the goat as a gift to the mayor of the city, hoping thereby to garner a greater favor in return. The mayor, however, behaves churlishly: He orders his servant to give the man a drink of third-class beer and to throw him out. The rest of the story is taken up with our hero’s elaborate revenge, whereby he succeeds in administering the mayor not one but three good beatings.

To begin his revenge, the Poor Man of Nippur first approaches the king and asks him for the use, on credit, of a chariot for a day, so that he can play the part of a noble. The king accedes without hesitation or without inquiry into his motives. Improbable as this scenario may seem, it is true in principle regarding a further aspect of social justice presumed by the story. In real life, it was indeed to the king that oppressed citizens looked to fulfill the demands of social justice. A principal function of the king was to intervene in cases of oppression, for the legitimacy of a king’s reign was based upon a divine mandate, the terms of which included ensuring social justice in his realm (Finkelstein 1961: 103). The oppression that he was expected to guard against was abuse of administrative power, as in the story above (albeit resulting in more than mere loss of face), or of economic power.

It is for this reason that widows and orphans were singled out for protection

by the king. A widow or an orphan need not necessarily be poor; but on the death of the head of a household there might be no one to defend their rights, especially their inheritance rights, against those who coveted the deceased's property. The king, therefore, being head of the household for the population as a whole, intervened as substitute *paterfamilias*. Thus, King Hammurabi of Babylon (eighteenth century) wished to be remembered by the oppressed for whom he had done justice as "the master who is like the father of a child to his people. . . ." ⁶

The vulnerability of the weaker classes in general is illustrated by a paragraph from the earliest recorded legislative act in history, the Edict of King Uru-inimgina, ruler of the Sumerian city-state of Lagash in the twenty-fifth century: ⁷

Should the house of a noble adjoin the house of a commoner and the noble says to him: "I wish to buy it from you," and he says: "If you wish to buy it from me, pay me a satisfactory price; my house is a basket—fill it with barley!" If he does not then buy from him, the noble shall not, in his anger, "touch" the commoner. ⁸

What measures are involved in "touching" the commoner are not made clear, but it is evident that the noble's action was not benign and was aimed at acquiring the commoner's property without having to pay the asking price. As would be expected with such an archaic text, much of its language is obscure.

The paragraph apparently does not impose a sanction upon the oppressive noble. The versions of the Edict that we possess are not contemporaneous with its promulgation; but inscriptions from later in the king's reign boasting of his earlier achievements, and much that is recorded in them, may be no more than propagandistic hyperbole. Nonetheless, they would seem to provide sufficient evidence that on his accession to the throne King Uru-inimgina did institute a number of practical reforms, with particular emphasis on the state administration and its bureaucracy (Maekawa 1973–74: 114–36). Various practices of officials are detailed—the appropriation of property, the receipt of payments and the use of services—which we are given to understand were regarded as abusive, because the officials in question were removed from those areas of responsibility. One reform is clear: The former charges by different functionaries for expenses connected with funerals were listed and a new tariff posted in which some of the payments had been drastically reduced, for example, from 420 loaves for the *Uhmush* to 80.

In paragraph 163 of the law code of King Hammurabi, punishment is explicit and is severe where abuse of power takes the form of maltreatment of a subordinate by an official:

If a "captain" or a "lieutenant" takes a soldier's possessions, deprives a soldier of his due, gives a soldier out for hire, delivers a soldier into the hands of the powerful in a law-suit, or takes a gift that the king gave the soldier, that "captain" or "lieutenant" shall be killed.

The ancient legal systems did not strictly separate administrative and judicial powers. An official could act in a quasi-judicial capacity, deciding the legal rights of those subordinate to him without a formal trial, even in cases where the official himself had an interest. The best recourse for the injured party was to the king by way of petition. King Hammurabi writes to a senior official as follows (Thureau-Dangin 1924: 15):

To Shamash-hazir, speak! Thus says Hammurabi. Sin-ishme'anni of Kutalla, the orchard-keeper of the Dilmun date-palms, has informed me as follows: "Shamash-hazir expropriated from me a field of my paternal estate and gave it to a soldier." Thus he informed me.

The field is a permanent estate—when can it be taken away? Examine the case and if that field does belong to his paternal estate, return the field to Sin-ishme'anni.

In this case, apparently, the official had wrongfully exercised his discretion to expropriate land, probably for failure by the landowner to meet certain public obligations.

Not every act of oppression, however, involved illegality. Even while operating within the letter of the law, it was possible to achieve results that were regarded as unjust because of their harmful social or economic consequences. This was the case with the laws regarding debt in the ancient Near East. The law allowed a creditor, if unpaid, to acquire by way of foreclosure not only the debtor's property but also his family and even his own person in slavery. The burden of debt was a serious socioeconomic problem, leading to the dispossession and enslavement of the class of small farmers. Several different measures were therefore employed to restore families to their patrimony and debt slaves to their families, in derogation from the strict rights of the creditor under the contract of a loan.

The first measure was the right of redemption. If property was pledged for a loan, by the nature of things that property would be released by the creditor to its owner upon repayment of the loan. The courts, however, extended this principle to property sold outright, where the transaction was in effect a forced sale at undervalue to pay off a debt. The seller was, under certain conditions, allowed to buy back—to redeem—his property at the original price. This equitable principle applied only to certain types of property, namely members of the family sold as slaves and family land (Westbrook 1991: 90–117). Paragraph 119 of Codex Hammurabi deals with a case arising in the first category: "If a debt has seized a man and he sells his slave-woman who has borne him children, the owner of the slave-woman may pay the silver that the merchant paid and redeem his slave-woman." By virtue of her having borne her master children, the slave acquires the status of a member of the family insofar as the right of redemption is concerned. Note that she does not gain her freedom as a result; the purpose

of redemption is to protect the integrity of the family, not necessarily to improve the lot of the individual.

Paragraph 39 of Codex Eshnunna⁹ deals with a sale of family land: “If a man grows weak and sells his house, the day that the buyer will sell, the owner of the house may redeem.” The phrase “grows weak” is an indication that a forced sale for debt is meant (Westbrook 1991: 100–102). The law protects not the poor as a class, but the impoverished, that is, those families who are in danger of losing their place on the socioeconomic ladder. It was not intended to bar the normal sale of land at its full market price, but was intended for those cases where the “price” was really the amount of the loan and the property was in effect being confiscated for default on that sum. A contract from Emar, a city-state that flourished in north Syria in the late second millenium, depicts the circumstances contemplated by the law (Arnaud 1986: no.123):

A owed twenty shekels of silver to B and ten shekels of silver to C and could not repay. Now A has sold his house to B and C for thirty shekels of silver as full price and has handed over to them the old tablet of his house that was sealed with the seal of (the god) Ninurta.

If in the future A repays the thirty shekels of silver to its owners in a single day, he may take his house. If not, and if two days have passed, whoever in the future claims this house may pay the same amount of silver and take his house.

The final clause is an oblique reference to the fact that in default of its exercise by the seller, the right of redemption accrued to the seller’s nearest relative. Again, it is the family (in the sense of extended family or clan) that this social law is primarily designed to benefit, not the individual. The order in which the right may be exercised is given in the redemption law of Leviticus 25.47–49:

If a resident alien grows successful among you and your brother grows poor with him and he is sold to a resident alien among you or to the descendant of an alien clan, after he is sold he shall have redemption: one of his brothers may redeem him or his uncle or his cousin or a further relative from his clan may redeem him, or he may be redeemed by his own resources.

A further document from Emar shows this right in operation (Arnaud 1986: no.205):

A died and his sons entered B’s house and he (B) released the 25 shekels of silver. And now B brought the two sons of A before . . . the city elders and their father’s brothers. He spoke thus: “Take your two nephews and give me back my 25 shekels. . . . These two nephews entered voluntarily into my slaveship.”

Their father’s brothers refused to give the 25 shekels belonging to B and they confirmed by a sealed tablet, voluntarily, the enslavement of their two nephews to B. Dead or alive,

they are B's slaves. In the future, if C and their father's brothers say: "We will redeem our two nephews," they shall give B two souls for D and two souls for E, the blind one, and they may take their two nephews.

Redemption, therefore, was not a very reliable form of social protection. The seller might be unable to raise the amount necessary to repay his debt, even though it was less than the market price of the property, and other members of the family might be equally unable or unwilling to do so in his stead. In the book of Ruth (4.3–6), Naomi's closest relative decides to forego his right of redemption when Boaz reveals to him that it will trigger the duty of levirate marriage and thus render his investment unprofitable (Westbrook 1991: 63–67).

If redemption failed, however, all was not lost. A second, more radical, remedy might be available. According to Codex Hammurabi 117, "If a debt seizes a man and he gives his wife, son and daughter in sale or *ana kiššātim*, they shall serve in the house of their purchaser or holder for three years; in the fourth year their freedom shall be established." The same remedy for debt slavery is provided by Exodus 21.2 and Deuteronomy 15.12, except that the period of service before release is six years. In all these laws, release from slavery occurred by operation of law; there was no need for any redemption payment. This was a special privilege for members of the family; it did not apply to family land.

It is curious that the period of service varies so radically between the biblical and cuneiform laws. Despite their apparently absolute language, such paragraphs in the law codes may possibly reflect an equitable discretion of the court that was applied in differing measure according to the circumstances of the case. The rationale for release appears to have been that the debt slaves by their period of service had paid off the capital of the debt. This somewhat more flexible criterion is used in Codex Lipit-Ishtar, a Sumerian law code predating Codex Hammurabi by about a hundred years. According to paragraph 14, "If a man has returned his slavery to his master and it is confirmed (that he has done so) twofold, that slave shall be released." A similar underlying principle is alluded to in the remark of Deuteronomy 15.18 that "he has served twice the hire of a hiring in serving you for six years."

In practice then, the actual lapse of time needed for a court to declare the release of debt slaves will have varied. Nonetheless, it was still linked to the contract between the parties and acted upon its terms in a manner that could be anticipated. This was not the case with the third and final measure, which sought to achieve social justice through a sweeping and arbitrary intervention in the normal economic life of the society.

It was the practice of Mesopotamian kings every so often to issue a decree annulling debts throughout the kingdom. The decrees were retrospective: They applied to existing contracts at whatever stage of completion they happened to be at the moment of proclamation. Affected also were those same ancillary transactions that the mechanisms of redemption and limitation of servitude

sought to control: the pledge or forced sale of family land or the enslavement of members of the family.

The king, in issuing a decree, was said to “establish equity for the land”—literally, a “straightening out.”¹⁰ The normal judicial activity of the king in answering individual petitions was defined in the same way. It was regarded as the correction of imbalances, the restoration of a status quo that had been destroyed temporarily by some act of injustice. “Equity for the land” was the same action on a grand scale, where the imbalance affected whole strata of the population.

The earliest mention of such a decree is in an inscription of a predecessor of Uru-inimgina at Lagash, King Entemena (twenty-fifth century). He boasts that he “caused the son to return to the mother, he caused the mother to return to the son, he established the release (‘freedom’) of interest-bearing loans.”¹¹

Entemena is here indulging in a rhetorical game, since the Sumerian term for “freedom” (*amar.gi₄*) means literally “return to the mother”; but its literal sense had long since given way to a technical legal meaning, as is shown by its use in this inscription for the release of debts.

Debt release also formed part of Uru-inimgina’s Edict: “He cleansed the citizens of Lagash, who were living in debt for planted acres(?), late grain, theft and murder—he established their release.”¹² The association of murder and theft with debts for crops and commodities may seem strange, but is perfectly logical in the context of the ancient Near Eastern system of criminal justice. I shall postpone discussion of it for the moment, however, since it is the subject of much more detailed provisions in a later edict.

The Sumerian documents of the third millennium yield few further references to the release of debts and no information on its operation in practice. It is the following period, the early second millennium (usually referred to as the “Old Babylonian Period”), that provides us with an abundance of sources: royal inscriptions, references in letters and private legal documents, and the partially preserved text of three decrees.¹³ The sources then decline precipitately in the following periods, but there are sufficient scattered references to establish that the custom had not died out and that our dearth of information is probably due to the random preservation of ancient records.¹⁴ In particular, an edict of a Hittite ruler of the twelfth century has recently been identified as containing debt release provisions (Westbrook and Woodard 1990: 641–59).

The most complete text of a debt release decree is the Edict of King Ammi-ṣaduqa of Babylon, the great-great-grandson of Hammurabi (Kraus 1984: 168–83). The twenty-two paragraphs preserved reveal a complex set of provisions designed to focus the effects of the decree on its intended beneficiaries while limiting disruption of normal commerce. The provisions are of two types, those canceling various categories of debts and those concerned with problems of implementation.

The central provisions are paragraphs 3 and 8, which contain a crucial distinction. According to paragraph 3, “Whoever lends silver or barley to an Ak-

kadian or Amorite at interest and has had a tablet drafted, because the king has established equity for the land, his tablet is broken. He may not collect silver or barley in accordance with his tablet.” Silver and barley are the normal media of exchange. Akkadians and Amorites are the two main ethnic components of the population. The wording could be intended to privilege these two ethnic groups in particular, but it is more probably a means of referring to the population as a whole, as opposed to the citizens of specific towns, who are the beneficiaries of other provisions in the decree.

The paragraph is thus drafted in the most general terms, annulling the normal type of loan that would be made to farmers, who composed the bulk of the population. In contrast, paragraph 8 states: “An Akkadian or an Amorite who has received barley, silver or goods as a purchase-price, for a (business) journey, for partnership or as a capital advance: his tablet shall not be broken; he shall pay according to his contract.” Trade was thus exempted from the operation of the decree. Various business transactions that involved the giving of credit would continue to be enforced by the courts, as long as the profit element was not derived from interest. Paragraph 9 specifies that if such a contract contains a penalty clause imposing interest after the due date for repayment has passed, that clause is void, but the contract itself remains valid.

A distinction between valid and invalid loans is an open invitation to fraud by moneylenders seeking to preserve their investment, and several paragraphs of the edict contain complicated measures to counter evasion. Paragraph 7 reads:

If a man has lent barley or silver at interest and has had a tablet drafted but has kept the tablet in his possession and said, “I did not lend at interest; the barley or silver that I gave you was for a purchase-price, for a capital advance or for another such purpose,” the man who borrowed the barley or silver from the merchant shall bring witnesses to the wording of the tablet that the lender denies. They shall make their declaration before the god, and because he distorted his tablet and denied the transaction, he shall pay six-fold. If he cannot pay his penalty, he shall die.

Note that the term *merchant* is synonymous with moneylender. Merchants were the source of capital for both trade and agriculture and thus would be in a position to claim that a transaction belonged to one sphere of their activities rather than another.

A slightly different type of annulment was the cancellation of arrears on unspecified debts that was made in favor of certain sections of the population only. The criterion appears to have been socioeconomic: Some of the groups named are known to be types of feudal tenants and it is possible that they may all have been dependants of the palace in one way or another. The intention of the legislation is expressly stated to be “to strengthen them and to deal equitably with them,” a statement that is made only with reference to these groups. At least part of the arrears in question, possibly all of them, were owed to the

palace itself in the form of feudal dues or taxes. Other paragraphs of the Edict (11, 12) reveal a complicated arrangement whereby merchants acted as wholesalers to market commodities owned by the palace, part of which the merchants received from palace stores but part of which they had to collect themselves from feudal tenants who owed the commodities by way of taxes.

Special consideration is given in the Edict to the position of the taverness. This lady was an important factor in the economic life of the society—and one to whom strict regulations applied to prevent her from engaging in fraud or exploitation.¹⁵ Beer was a staple commodity that was sometimes supplied as rations or wages. The taverness would market the beer of those who had a surplus and would supply beer on credit, or rather beer mash, which could keep for much longer, against payment in barley at the next year's harvest (Kraus 1984: 254). Although not in form a loan at interest, it was one in substance, since the taverness gained her profit by supplying in one commodity and receiving payment in another. Paragraph 17, therefore, bars her directly from claiming payment for this type of transaction.

The last provision from this Edict that I wish to discuss is directed, not at the debt itself, but at its consequences. Paragraph 20 reads: "If a citizen of Numhia, Emut-balum, Idamaraz, Uruk, Isin, Kisurra (or) Malgium has been bound by a debt and has given [hims]elf, his wife or [his child] in sale, *ana kiššātim*, or in pledge, because the king has established equity for the land, he is released, his freedom is established." Why the citizens of these particular towns should have been singled out is not clear. There is no common link between them and it is unwise to speculate as to special social conditions or pressures, for reasons that will be explained shortly. What is also remarkable is the similarity of language between this provision and CH 117 discussed above, which released the debtor's family after three years. It casts further doubt on the effectiveness—or, at least, the general applicability—of the law code provision.

The following paragraph of the edict contains an important proviso: The release in question is not to apply to house-born slaves of the citizens of those towns. Once again we see that the purpose of the edict is to aid citizens fallen on hard times; its conception of social justice does not extend to the truly weakest strata of society, those born into slavery or poverty.

One type of debt that is not covered by the Edict of Ammi-šaduqa but which we have already met in a tantalizingly brief reference in the Edict of Uru-inimgina is that arising from crime. Crimes such as murder, adultery, rape, and theft, which in modern law are prosecuted and punished by the state, were dealt with on an entirely different basis in the ancient systems. Such crimes gave rise to a dual right on the part of the victim or his family: to revenge or to accept payment in lieu of revenge. The payment was therefore neither a fine nor compensation, but composition, whereby the culprit ransomed his own life, limb, or liberty, depending on the nature of the revenge appropriate. The ransom agreement was a contract like any other and, therefore, gave rise to a debt that had

to be paid or satisfied in some other way, whether by transfer of the debtor's property, his family, or his own person (Westbrook 1988: 39–83).

Because a ransom agreement was a kind of forced sale, the question arises whether its consequences might be annulled under the terms of a debt release decree. That question appears to be addressed in the Edict of the Hittite king Tudhaliya IV:¹⁶

And if someone has given ransom for blood, and he has purchased himself from you; whether (the ransom be) a field or a person, no one shall release it.

If he (i.e., the holder of the ransom) has taken those things along with his (i.e., the culprit's) wives and sons, he shall release them(?) to him.

And if someone has given ransom for theft, if it is a field, they shall not release it. (II 3–10)

The edict distinguishes between two cases. In the first, a person has committed homicide and has paid a ransom for his own life: He has “bought himself.” Can the property that he handed over as the price of his life be released by the decree? The edict answers in the negative, even if the property be land or persons, which could refer to slaves or, possibly, dependent members of his family. In the second case, on the other hand, the creditor (i.e., the avenger) appears to have made a general seizure of the homicide's property and family, and their release is authorized. The edict then goes on to discuss debts arising from theft, along the same lines.

It may seem strange that criminals could be regarded as potential objects of social justice, but it should be remembered that payment of ransom would usually apply to less serious degrees of homicide and that the thief's condition might evoke some sympathy. As the book of Proverbs puts it:

A thief is not held in contempt
For stealing to appease his hunger;
Yet if caught he must pay sevenfold;
He must give up all he owns (6.30–31).

Under what circumstances were debt release decrees promulgated? It is clear that, traditionally, a king would be expected to declare a release in the first year of his reign, as part of the pomp and circumstance surrounding his accession to the throne. The copious evidence of the Old Babylonian period, however, reveals that a king in the course of his reign might issue one or more further decrees. Thus, Hammurabi appears to have issued a decree in the twelfth and again in the thirty-third year of his reign; his third successor, Ammi-ditana, in his twenty-first year; and the latter's successor, Ammi-šaduqa, in his tenth year. A contemporary of Hammurabi, King Rim-Sin of Larsa, is thought to have issued at least

three extra decrees, in the twenty-fifth, thirty-fourth, and some time after the fortieth year of his sixty-year reign.¹⁷

According to Bottéro (1961: 152–53), the frequency of these decrees indicates serious economic disorder in the kingdoms of the period. It took the form of the disastrous indebtedness of the majority of the population, which paralyzed production or, at least, failed to encourage it sufficiently, for the yield to satisfy the collective needs of the society. The decrees were to some extent acts of desperation, which attempted to cure the worst effects of the economic situation without dealing with its underlying causes.

I regard such conclusions with scepticism. The debt release decree was an ancient custom that formed part of the religious duty of kings. There is no evidence that the economic situation was worse in the Old Babylonian period than at other times nor that indebtedness, however widespread and crushing, would have had a serious effect on overall production. It would, on the other hand, have altered the distribution of land ownership, with a tendency toward the formation of *latifundia*. Accordingly, we should look to social rather than economic stability as the motive for these recurrent decrees.

The cuneiform records give little evidence of social unrest. It is true that they represent the voice of the establishment, rather than the opposition, but one would still expect to find some echo of widespread discontent in the sources. The “protest” of the individual debtor lay in flight, abandoning his home and family and seeking refuge in a foreign kingdom or perhaps in the lightly populated steppe. It is also possible that the various social measures were effective in keeping economic grievances from becoming too widespread. Tudhaliya IV informs us at the beginning of his edict that it was promulgated as a direct result of a protest by his citizens:

When I had destroyed Assuwa and returned to Hattusa, I refurbished the gods; the men of Hatti all began to bow down to me, and they spoke as follows: “O great king, you are our lord, a leader of campaigns. Are you not able to judge in matters of justice? Behold, evil people [...] have utterly destroyed [...] the feudal holdings and the *sarikuwa* tenants [...] (I 1–11).

Unfortunately, the broken state of the tablet prevents us from learning what the point of the protest was. Nonetheless, it does show the ability of the citizens as a group to petition the king about a particular abuse—and in fairly bold terms. Similar group petitions are found elsewhere in the Hittite sources. Paragraph 55 of the Hittite Laws records the king’s accession to a petition by a certain class of feudal tenants to receive equal treatment to that of other classes. In a document from Ugarit, PRU IV 17.130 (Nougayrol 1956: 103–5), a vassal state of the Hittites, the king of Ugarit petitions the Hittite emperor on behalf of his free citizens, who have complained that Hittite merchants are “heavy upon the land.” The emperor grants a seasonal restriction on the merchants’ activities at Ugarit. By contrast, the dire political consequences of failing to heed popular

grievances are revealed in the biblical account of King Rehoboam's refusal to grant a petition of his citizens led by one Jeroboam (1 Kings 12.1–20).

The Old Babylonian decrees do not mention any specific occasion for their promulgation; the only motivation given is religious—that it is pleasing to the god of justice.¹⁸ The same motivation, it should be noted, is present in the Hittite decree. Tudhaliya's remark that he refurbished the gods would appear to have no relevance to his account, unless it is to suggest that part of the "refurbishment" was to correct injustices displeasing to the gods.

Fear of the gods may provide a clue to the specific occasion for some of the decrees. It will be recalled that the edict of Uru-inimgina referred to the release of debts as a process of "cleansing." If an accumulation of injustice could, like murder or sacrilege, ritually pollute the land, then the anger of the gods would express itself in general disasters such as crop failure, plague, and defeat in war; and debt release would be a means of assuaging their anger. An example from the Bible is the slave release decree of King Zedekiah, proclaimed when Jerusalem was besieged by the Babylonian army (Jer. 34.1–10). While nothing so dramatic can be correlated with any of the Old Babylonian decrees, it is possible that their occasional nature may be linked to natural disasters, such as failure of the harvest, that resulted in a year of famine and provided good grounds, political and religious, for relief of debts.

Whatever the occasion for their promulgation, the one character that the decrees from cuneiform sources share is their unpredictability, depending entirely on the discretion of the ruler. The same is true of the decree promulgated in an emergency by King Zedekiah. In contrast, the equivalent measures enshrined in biblical laws—the famous Sabbatical and Jubilee years—are cyclical in occurrence and automatic in operation. Deuteronomy 15.1–3 directly annuls debts: "Every seventh year you shall make a cancellation. The cancellation shall be as follows: every creditor is to release the debts that he has owing to him by his neighbor; he shall not press his neighbor for payment." Leviticus 25.9 annuls transactions founded on debt which resulted in the alienation of family land or the enslavement of members of the family: "You shall make the fiftieth year a holy year and declare freedom in the land for all its inhabitants: it shall be a Jubilee for you and each man shall return to his estate and each shall return to his clan."

Now this cyclical aspect changes the whole nature of the debt release and ultimately destroys its usefulness. It was the very unpredictability of the decree that made it effective: It acted retrospectively and without warning on existing contracts. But a creditor who knows that his loan is bound to be annulled at a certain point in the future and any security taken lost will simply not give credit or will find some means of evading the release. The effect on debtors will be far worse than before, drying up their sources of credit or driving it underground into a black market. The biblical measures, unlike their cuneiform counterparts, must therefore be regarded as utopian.

The question then arises, why a practical measure, which was used by Israelite

kings in the same manner as Mesopotamian and Hittite rulers, was turned into an impractical one. The answer is suggested by the aftermath of King Zedekiah's decree. The decree ordered the release of debt slaves, which indeed occurred, but subsequently the same persons were enslaved again by their former masters (Jer. 34.10–11). This breach of faith elicited divine anger, as conveyed through the prophet Jeremiah: “Thus says the Lord: Because you have not obeyed me by declaring freedom, each man to his brother and his neighbor, I hereby declare freedom for you, says the Lord, to the sword, to plague, and to hunger, and I shall make you an object of horror to all the kingdoms on Earth.”

In general, the Hebrew prophets repeatedly inveighed against the Israelite ruling class for their failure to do social justice: “Woe to them who make evil decrees and who write documents of suffering; to turn aside the indigent from judgment and to oppress the poor in court, to make widows their booty and orphans their plunder” (Isa. 10.2). Like the prophets, but unlike the cuneiform sources, Leviticus and Deuteronomy derive from circles representing the voice of the opposition. In their eyes, the Israelite kings had failed in their constitutional duty; they had not taken the necessary measures to ensure the social justice that their divine mandate demanded of them.

Since the king of flesh and blood could not be trusted to proclaim a debt release when needed, these circles advocated its removal from his discretion to the authority of the divine king and—to make sure that it happened—made its occurrence cyclical.

In summary, social justice was regarded in the ancient Near East as the preservation of the status quo—as the privileges owed to each citizen as member of a family unit with a certain recognized socioeconomic status. Where those privileges were lost through an act of oppression, certain mechanisms were available to restore the balance.

If due to abuse of administrative power, a petition to the king was expected to result in an order canceling the administrative act and, if necessary, punishing the offender. If due to abuse of economic power, the right of redemption was available to the debtor or his family. If that right could not be exercised, there remained for debt slaves the possibility of release without payment after a period of service. Finally, the king could intervene by a general cancellation of debts and of transactions ancillary thereto.

Ultimately, it was the responsibility of the king, as part of his divine mandate, to ensure that these mechanisms functioned effectively. Mesopotamian kings boasted of having fulfilled their mandate, but evidence from the Bible suggests that the practice of kings sometimes failed to live up to the ideals of social justice.

NOTES

1. On the common legal tradition, see Paul 1970; on the common view of social justice, see Weinfeld 1985. Epsztein 1986 is a general survey based on secondary sources.

2. Sumerian *arad*; Akkadian (*w*)*ardu*; Hebrew ‘*ebed*.
3. Codex Hammurabi rev. xxiv 59–61. Pritchard 1969: 163–80.
4. Codex Ur-Nammu 162–68. Pritchard 1969: 523–25.
5. Dearman (1988: 52–53) finds a similar profile in the Bible for the class of poor for whom the prophets demand social justice.
6. Codex Hammurabi rev. xxv 20–21.
7. See Steible 1982: 288–312; English translation Cooper 1986: 70–76.
8. In the edition of Steible 1982: Ukg. 4.11.32–12.11. = Ukg. 5.11.1–18; cf. Cooper 1986: 72. The Sumerian term here translated “touch” (*tag*) is translated by Steible as “(den Zorn daruber) fühlen lassen,” and by Cooper as “strike at him.”
9. A kingdom to the north of Babylonia in the eighteenth century. The name of the king responsible for this code is not preserved. Most probably it is to be attributed to King Dadusha, an earlier contemporary of Hammurabi. In that case, it would predate Codex Hammurabi by several decades.
10. Sumerian: *níg.si.sá*; Akkadian: *mīšharum*.
11. Entemena 79.4.2–5. Steible 1982: 269.
12. In the edition of Steible 1982, Ukg. 4.12.13–22 = 5.11.20–29.
13. Kraus (1984) contains all known Old Babylonian references to that date and an edition of the three extant decrees.
14. See the *Chicago Assyrian Dictionary*, vol. 1/2, *sub anduraru*, g and h, pp. 116–17, for references from Nuzi (fifteenth century) and the neo-Assyrian period (eighth–sixth century). On the latter, see Lewy 1958: 30*–31*.
15. Codex Hammurabi 111 fixes the rate at which the taverness could give beer on credit, and paragraph 108 prescribes the death penalty for a taverness using false weights. A slightly earlier law code, Codex Eshnunna, in paragraph 41, obliges the taverness who sells nonresidents’ beer on their behalf to obtain the current market price.
16. Westbrook and Woodard 1990: 642–44.
17. See Kraus 1984: 16–110 for a full list of all possible edicts alluded to in the Old Babylonian sources.
18. An example is the following petition to the king: “When my lord raised the Golden Torch for Sippar and established equity for Shamash (the god of justice) who loves him” (Finkelstein 1965: 236).

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Social Reform in Ancient Mesopotamia

BENJAMIN R. FOSTER

GENERAL CONSIDERATIONS

Social reform in contemporary experience implies change in society with long-term consequences, usually legal and economic, for a group within that society. Examples of social reform from modern times include universal suffrage and abolition of slavery. When we survey the three thousand years of Mesopotamian written tradition, we cannot readily identify social reforms understood in this way. Unless avowed Marxists, we find little direct evidence for social discontent, popular movements, charismatic crusaders, or other familiar forerunners of social reform. This is no doubt to a large extent due to the nature of the written record, which tends to reflect the interests and concerns of the literate elite. Social discontent as expressed in literature does not, so far as we know, result in long-term change: We have no *Uncle Tom's Cabin* to point to. But in a culture where only a small percentage of the population could read, mass movements inspired by the written word are not to be expected.

OLD BABYLONIAN INSCRIPTIONS, EDICTS, AND TARIFFS

We have an assortment of Mesopotamian documents that record government action to modify certain social conditions—and, thus, are candidates for the modern category “reform.” Most date to the period 2000–1550 B.C.E., for reasons that need to be considered. Translations and bibliographies for certain of these documents are given in the Appendix to this chapter.

The first text to be considered (see Appendix, Text 1) records a nine-point royal program analyzable as follows:

Good Living Conditions

1. ending hunger
2. easing the task of earning a living
3. security of dwelling
4. promoting happiness and contentment

Government Cutbacks

5. reducing taxes
6. reducing the draft for compulsory government service
7. curtailing a specific government practice that was the cause of popular complaint

Law and Order

8. promoting law and order
9. reinforcing of honest citizenry

Modern experience suggests, and ideologies often insist, that social reform is brought about by individuals determined to alter institutions that they find unjust. Here the author of change is a king. Our suspicions are aroused. Why would kings profess interest in social change, when they themselves sit at the apex of the society they propose to change, presumably enjoying the highest material well-being and prestige?

Suspending our skepticism, we find the king describing his social program from three aspects. First is promotion of stability and prosperity for the good of the citizenry as a whole, without regard to class. Second is reduction of government exactions of goods and services, thus placing the interests of the citizenry as a whole, so far as we know without regard to class, ahead of those of the palace administration and economy. Third is expression of concern for honest citizens as individuals, without regard to class.

Where is the reform in all of this? We sense a contrast, express or implied, with the preceding period, reign, or administration, though this text, unlike some to be considered later, does not draw such a contrast. What strikes us is the vagueness of much of it. The only specific measures alluded to are reductions in certain dues from the citizenry to the government and curtailment of one unpopular practice. These are packaged as symptomatic of an era of bliss, described with literary topoi well known even 3,000 years ago, though they were fresher then.¹ So our first example of social reform dissolves into specific royal enactments announced with a rhetoric in which good times are implicitly contrasted to bad times, and the success of a reign is portrayed as the result of divine election of a worthy agent.

The historical background of this document was a period of rival city-states in Babylonia, often more or less of equal strength—a time of frequent warfare for regional hegemony and access to water.² Development of irrigation and competition for control of upstream water may reflect a population increase in Babylonia, perhaps through migration and resettlement from northern Syria at

the end of the third millennium in the face of drier conditions there.³ Security and prosperity in this period were more often sought than achieved. The Babylonian ruler was wont to present himself as a shepherd, a leader responsible for feeding his flock, protecting it from outside enemies (no inside ones are visualized), and making a legitimate profit from his herd.⁴ The profit-taking aspect is normally expressed in terms of statements of prosperity, such as we already have here. The only sacrifices are those made by the government.

Let us look at another type of reform document, from a century or more later, which demands sacrifice from a broader range of the population, Appendix Text 2. This has none of the overt literary appeal of the first example. If the first text is a commemorative inscription, designed for posterity, this is the careful wording of official contemporaneous implementation. Much of this decree is fragmentary and obscure, and its social background a matter of debate, so our discussion will focus on a few better-preserved provisions with a view to discerning what the Babylonians thought it accomplished and why they thought it was necessary.

First, it is clear that certain provisions of the edict (Appendix Text 2: 3, 20), abolished debt and debt slavery in effect at the time of the edict, and even stipulated restitution of certain debts collected prior to the issuance of the edict, with the death penalty for failure to comply (Appendix Text 2: 4). What sector of the population benefited from such an act, and why was it promulgated? Here we may fall back on recent studies of the structure, functioning, and evolution of Babylonian society in this period. It appears that in certain cities wealthy individuals amassed substantial fortunes through short-term loans at high interest, ranging from 25 to 33 1/3 percent, in grain and silver. Debts were normally repaid at harvest time. Furthermore, there is evidence that some of these moneylenders could advance as loans money that they had collected locally from royal tax revenues—and were responsible for gathering or converting into cash—and that they were not under immediate pressure to remit to the palace: Hence, maximum profit at minimum risk.⁵ Debtors unable to pay the loan and interest could become debt slaves of the creditor, ransomable only by payments collected by their relatives and friends. We need not be advanced economic theoreticians to suppose that there might be a relation between such high rates of interest and the possibility of an edict abolishing debt, although we may ask which was first, the risk or the rate. If the funds loaned in some instances were not even the personal resources of the creditor, then his losses were insignificant, assuming that the palace might forfeit loans made from tax revenues.

Among Marxist historians, especially, there prevails the notion that the possibility of edicts remitting debt will cause a low price for land (especially if land sales could under certain circumstances be voided anyway), a high rate of interest, and a shortage of long-term credit.⁶ We may well wonder if edicts were part of the problem or the solution. We might further wonder if the edicts did not in fact favor moneylenders in the long term, even if unintentionally—and, thus, we might wonder whose benefit the edicts ultimately served.

What is most important for our present purpose is the understanding that the Babylonians had that these did not constitute reform in the sense of a new departure but constituted “restoration” to a former, natural state. Society was seen to be in need of periodic readjustment—and then indebtedness could begin over again.⁷ Contemporary perception of reform need not presuppose cyclical reversion; we prefer linear evolution, whereby society adapts to the needs of different times and people. In contrast, the Babylonian perception of reform was reversion to a past norm.

Before we essay the more difficult question of what the norm in society was viewed to be—and how these measures were intended to bridge the gap between what was and what was supposed to be—let us consider some indirect, even quantifiable, evidence for conceptions of a properly balanced society.

Ideal economic conditions were often expressed in Mesopotamia by tables of prices of certain commodities, which, despite their variegated nature, we tend to construe as a sort of market basket (see Appendix, Text 4).

From what we know of actual prices in this period, these figures may be a third or less of reality.⁸ The figures quoted in a prayer of Assurbanipal (see Appendix, Text 6), a thousand years later, are fantastic, as if the table had been turned from wishful thinking into make-believe. Of the examples of reform and prosperity that we have noted, the table of prices is the longest to survive, and, for whatever reasons, lived on as a terrestrial observation in astronomical diaries of the Hellenistic period.

There are also what appear to be formal tariffs, such as the example quoted in Appendix Text 5. There is no indication of sanctions to enforce such prices. It is noteworthy that the tariffs are paired with rates of hire, as if prices and wages were both aspects of the same regulatory policy. The tariffs may bear the same relation to the prices as the edict does to the commemorative inscription: the one allegedly descriptive, the other prescriptive. Again, we have little evidence in favor of their foundation in reality. With both Sin-kashid and Assurbanipal we have the impression that low prices were considered symptomatic of divine favor for the reign as manifested in a strong economy. A strong economy was seen as a state of blissful normalcy rather than the result of economic intervention.

THE “REFORMS” OF URUINIMGINA

No discussion of Mesopotamian social reform can avoid the group of commemorative inscriptions known today as the “Reforms of Uruinimgina” (formerly read Urukagina). This group of texts dates to around 2300 B.C.E., centuries earlier than the texts discussed so far, a period as different socially, ethnically, and economically from the Old Babylonian period as the London of Elizabeth I might be from that of Elizabeth II. I have hazarded a translation of selections from these documents in the Appendix as Text 3, and arbitrarily numbered the provisions for convenience of reference.

If the reader of these translations feels uncertain as to what the text means, he is in the good company of generations of scholars who have labored to understand these unique and perplexing documents. Before we hail them as early examples of social reform, as has often been done, and from quite different ideological perspectives,⁹ we should at least note that the majority of the provisions are obscure, containing words and expressions of unknown meaning and that even those words where the surface sense seems clear are opaque as to their application or significance.

Unlike the texts discussed so far, the Uruinimgina documents draw a sharp line between customs of the past and those after the implementation of the changes listed. This makes “reform” an attractive interpretation. Interpreters have leaped to the conclusion that the conditions listed in the first part of the text were “abuses” that the text corrected; that is to say, Uruinimgina is said to have restored society to an earlier state of affairs by cutting back on government usurpation while restoring to temples their old prerogatives. It is regrettable, for this interpretation, that Uruinimgina did not say this (if we understand the text correctly), but insists that the institutions he was changing had existed from earliest times.¹⁰ The rhetoric of his inscription is not one of restoring ancient practices but of changing them, so he himself wished his changes to be seen as innovations, a new normalcy. Thereby, he is at least a candidate for the category “social reformer,” even if, according to some distinguished critics of his program, he was trying to gain popular support at the expense of vested interests or to strengthen his position against the temples.¹¹

The opening clauses (1) are straightforwardly expressed: Certain people took possession of certain assets. Did the boatmen take for themselves boats that were actually temple property? There is no indication of this in the text. Does it mean that in the past everyone owned his own boat, but that in the new era boats were “nationalized” in some way? Why did people put down silver for certain sheep? Was this an exaction? We have no idea, despite numerous proposals, and thus have no way of evaluating the new program.

The passage that states that the city ruler’s gardens were on temple lands (Appendix Text 3: 2), if considered an abuse, would suggest a usurpation: the “secular establishment” had encroached on the temples. Therefore, it is all the more regrettable that the inscription does not actually say this, but suggests that this had always been the practice and that it was changed. If we stay close to the wording of the text, we see rather the creation of a new, allegedly theocratic state: All land belongs to the gods now. In practical terms, this could easily mean that the city ruler had taken over all the temples, proclaiming that the gods had taken over the rule of the city (“all power to the gods”). This could account for the removal of “inspectors” from the realm (Appendix Text 3: 10); there was no longer interface between a palace and a temple economy where both were combined.

Burial customs were reformed (Appendix Text 3: 4, 11). We do not know if the *Uhmush*-person was a sort of undertaker, or, since a bed and the like were

included in the costs, if the goods listed were actually grave goods. There are also provisions for rations and offerings of various kinds, not all of them obviously lower, or an adjustment on, previous provisions (Appendix Text 3: 12). Another vexing passage has to do with women who could have two men (Appendix Text 3: 15.) Far from suggesting polyandry in ancient Sumer, this reform could have abolished the possibility of a woman distrained for debt being liable to sexual exploitation by a creditor.

In short, despite its length and complexity, the corpus of documents from Uruinimgina remains an enigma. Some of these changes were presented as improvements for the common benefit, but others sound suspiciously like the creation of a new ideology, wherein the ruler and his family administered the temples and their lands as servants in a new theocratic state. We do not find in our documents any trace of either increased prosperity or promotion of justice, the two staples of the later Mesopotamian documents considered here. Rather, the gods have taken over the government. Uruinimgina's program, which looks at our distance like a case of extreme centralization couched in theological rhetoric, remains baffling to us.

LATER REFORMS

Reform in Babylonia during the second half of the first millennium B.C.E. was often expressed as a return to age-old values and institutions that had fallen into disuse through forgetful generations. Rulers boast in their inscriptions of reviving ancient rites and practices, even archaeological excavations to reconstruct the plans of ancient buildings. Indeed, reform of the present often took on an antiquarian aspect. One of the most interesting records of such activity appears in the document excerpted as Appendix Text 7. This implies a moral standard that had fallen into desuetude, the terms of which can be easily paralleled from wisdom literature that enjoins care for the widow, orphan, and poor. Here the motif is refurbished into a vivid personal narrative that includes a description of a water ordeal that may itself have been a revival of a long-obsolete legal practice.¹² We learn nothing here of remission of taxes, debts, or service, though royal abuse of service and requisition are referred to in texts such as the "Fürstenspiegel," otherwise known as "Advice to a Prince."¹³

LITERATURE

Rulers have had their say. We detected in Babylonian sources from the first half of the second millennium B.C. a sense that there was a norm for society, that society tended to get out of balance, and that kings had to restore society to its normal state. The earlier Sumerian example was different in that it implied an old norm was replaced by a new one. If kings are not always the most reliable spokesmen for the social conditions of their time, we need to consider the observations of others. At about the same time that King Ammisaduga was can-

celing debt slavery, a Babylonian scholar was copying out a lengthy narrative poem about the origin and development of human society. We do not know exactly when this was first written or who wrote it, but from what survives we recognize a masterpiece.¹⁴ Like all great poems, it offers a wide range of considerations to the reader, including the student of Babylonian social reform. The key phrase “establish restoration” occurs several times at crucial turns in the plot, the same phrase used in commemorative inscriptions to describe how kings righted imbalanced societies (cf. Appendix Text 2: 20).

As the poet tells it, once there was a division among the gods such that great gods imposed corvée labor on lesser gods for the purpose of digging the Tigris and Euphrates rivers. Sick of the labor, the lesser gods burned their tools, rioted, and staged a protest at the house of the chief god. The great gods held a conference and a proposal was made that a substitute be created to do the work of the lesser gods so as to maintain all the immortals. With the collaboration of the god of wisdom and the birth goddess, the gods executed the ringleader of the riot and used his blood and heartbeat to make a new creature, a human being (whence, one may assume, the rebellious spirit of the human race). The lesser gods were freed of labor service: Divine society had been reformed and a new servitor created. “I abolished labor service, I removed cause of complaint, I caused the citizenry of heaven to dwell in peace (no more riots) and prosperity,” so an imaginary inscription might run. We suspect that the poet did not see the reform of heaven as necessarily just or equitable.

The social background against which this text was written included corvée service (“[only] four days a month,” see Appendix, Text 1). Few institutions were so hated, and more than one ruler sought favor by reducing or modifying it.¹⁵ As late as the first millennium, literary texts refer to corvée and recruitment as examples of tyranny. Thus, this part of the composition must have found a lively response in its readership.

The gods’ human creatures went forth and multiplied. So great became their clamor and bustle that the chief terrestrial god, Enlil, lost sleep. Increasingly drastic measures undertaken to decimate humanity (starvation, plague) proved inadequate, so finally the gods agreed on a catastrophic flood to wipe out the whole human race. A man and woman survived by building a boat and taking aboard an assortment of animals. The gods soon repented their deluge because no one was left to feed and provide for them. Therefore, they welcomed the repopulation of the earth but invented stillbirth, celibacy, childlessness, and other means to keep the population under control and instituted the last and most significant of their reforms, namely, death for the human race.

The human lot is by divine design unfair and exploitive. There is no word about decreeing justice or prosperity for the human race; this is left for mere kings to carry out. Human beings carry within them the spirit of a sublime troublemaker—meaning, ultimately, that reform will always be necessary and doomed to failure. To the poet, death was the final social reform—instituted by the gods so that they would not be bothered by a procreative human race.

To a contemporaneous observer, reform could therefore be an instrument of tyranny. It kept the population constant so as to permit effective exploitation, rather like culling a herd. So, too, the Old Babylonian royal decrees put the population into economic balance and thereby created, intentionally or not, fresh opportunities for exploitation, making a phoenix of the dying golden goose.

APPENDIX

Text 1: Reforms of an Early Old Babylonian King

Source: Frayne, Douglas R. (1991). *The Royal Inscriptions of Mesopotamia: Early Periods*. Vol. 4, *Old Babylonian Period (2003–1595 B.C.)*. Toronto: University of Toronto Press, 87–90.

O god Enlil, this is my destiny which you established at (your) temple: I established justice in (your city) Nippur, I made righteousness appear. As if for sheep, I sought out forage and fed (the people) in green pastures. I lifted the heavy yoke from their necks. I settled them in secure abodes. The righteousness which I established in (your city) Nippur made (the people there) happy . . . I made the land content. I reduced to one tenth the grain tax that formerly was one fifth. I made the ordinary citizen perform labor service (only) four days a month. The cattle of the palace which used to graze in certain fields, and which were a source of complaint, I removed those cattle from the plowed land. I made anomalous the person with a complaint. I am a judge who loves righteousness. I abolished evil and violence. I rehabilitated the just man.

Text 2: From the Edict of Ammisaduga

Source: Kraus, Fritz Rudolf. (1984). *Königliche Verfügungen in altbabylonischer Zeit*. *Studia et Documenta ad Iura Orientis Antiqui Pertinentia* 11. Leiden: Brill, 168–83.

. . . When the king established justice in the land,

(1) With respect to arrears of tenant farmers, shepherds, tanners, seasonal herdsmen, and those liable for support of the palace, to protect them and to treat them justly, it is decreed: the government collector shall take no action against the household of those liable for support of the palace.

(3) Whoever loaned grain or silver to an Akkadian (= Mesopotamian) or an Amorite . . . and had a document drawn up (recording the debt), his document is null and void. He shall not collect grain or silver according to the terms of the document.

(4) Furthermore, if, from the second day of the intercalary month (of a certain year) of (the preceding king) he has required repayment, inasmuch as he required repayment and collected out of the normal period for repaying debts, he must give back whatever he required to be repaid in this manner. Whoever shall not give back according to the king's ordinance shall die.

(20) If a citizen of Numhi, a citizen of Emutbal, a citizen of Idamaras, a citizen of Uruk, a citizen of Isin, a citizen of Kisurra, a citizen of Malgium has contracted a debt according to the terms of which he himself, his wife, or [his children] may become debt

slaves or pledges, because the king has established justice in the land, he is released, his restoration is established.

(21) (= this provision does not apply to chattel slaves)

Text 3: From the Reforms of Uruinimgina

Source: Steible, Horst. (1982). *Die altsumerischen Bau- und Weihinschriften; Inschriften aus 'Lagash.'* Freiburger Altorientalische Studien 5. Wiesbaden: Franz Steiner GMBH, 278–324. For a full English translation, see Jerrold Cooper (1986), *Sumerian and Akkadian Royal Inscriptions*. Vol. 1, *Presargonic Inscriptions*. New Haven, Conn.: American Oriental Society, 70–78.

(1) From distant days, from the very beginning, boatman would take possession of boat, herdsman would take possession of donkey, shepherd would take possession of sheep, overseer of fishermen would take possession of the . . . , *gudu*-priest would measure out grain in the (district called) Ambar. Shepherd would put down silver on account of a white sheep. Surveyor, chief cult singer, steward, brewer, all supervisors would put down silver on account of an offering sheep.

(2) The gods' cattle plowed the ruler's onion patch. The onion and cucumber patches of the ruler lay on the good agricultural land of the gods. Teams of oxen and draught oxen were hitched up for temple administrators. Grain of temple administrators was distributed to the ruler's troops.

(3) (4 types of garments), (a linen textile), (2 items made with flax), a bronze helmet, a bronze peg, (various other bronze objects), (an object of leather), a raven's wing, (3 other objects) temple administrators used to deliver for tax payment. (Another type of temple administrator) used to strip(?) trees in the orchard (called) Ama'ulu and garner the fruit.

(4) In order to entomb a corpse, the (*Uhmush*-person) took as his beer 7 pots, as his bread 420 loaves, 2 measures of (a certain kind of) grain, 1 garment, 1 good quality goat, 1 bed. In the place (called) Gi-Enki, the (*Uhmush*-person) took as his beer 7 jars, 2 (measures) of barley, 1 garment, 1 bed, 1 chair. The (Umun-person) took 1 measure of barley.

(5) The artisan had "prayer bread." The men (in pairs?) had the "gate-food allotment."

(6) The house of the ruler, the field of the ruler, the house of the (ruler's) wife, the field of the (ruler's) wife, the house of the (ruler's) children, the field of the (ruler's) children bordered one on the other.

(7) From the (northern?) boundary of Ningirsu (Lagash), as far as the sea (= the Gulf), there were inspectors. The (servile class called) "subordinate to the king" dug wells at the side of their fields and took possession of blinded people (for labor), they took blinded people for the irrigation ditches which were in the fields.

These were the practices then.

(8) When (the god) Ningirsu, heroic son of Enlil, gave kingship of Lagash to Uruinimgina and took his hand from among 36,000 men, he set aside what had been the destiny then. He took to himself the command which his lord Ningirsu spoke to him.

(9) Boatman was removed from boat, herdsman was removed from donkeys and sheep, . . . was removed from overseer of fishers. Supervisor of grain storage was removed from

the barley yields of the gudu-priests. Inspector of silver payments on account of white sheep and offering lambs was removed. Inspector of tax payments of temple administrators to the palace was removed. (The god) Ningirsu became owner of the house of the ruler and the fields of the ruler. (The goddess) Baba became mistress of the house of the (ruler's) wife and the fields of the (ruler's) wife. (The goddess) Shulshagana became owner of the house of the (ruler's) children.

(10) From the (northern?) border of (the god) Ningirsu to the sea (= Gulf) no one was inspector.

(11) In order to entomb a corpse, (the *Uhmush*-person) took as his beer 3 jars, as his bread 80 loaves, 1 bed, 1 first-quality kid. The (*Umum*-person) took 3 (smaller) measures of barley. In the (place called) Gi-Enki, the (*Uhmush*-person) took as his beer 4 jars, his loaves of bread 240, 1 (measure) of barley. The (*Umum*-person) took 3 (smaller measures of) barley. The high priestess took one woman's headband, 1 quart of fine aromatic, 420 loaves of bread.

(12) The bread delivery is 40 hot loaves, the eating-bread is 10 hot loaves, the tray bread is 5 loaves of the "man who is summoned," 2 large vessels and 1 regular vessel of beer is the portion of the cult singers of Lagash . . . 406 loaves, 1 large vessel and 1 regular vessel is the portion of the (other) cult singers. 250 loaves, 1 large vessel of beer is the portion of the old women who sing laments.

(13) (From another text): If a man divorced (his) wife, the ruler took 5 shekels of silver; the courier took 1 shekel of silver.

(14) Unreasonable liability(?) for stolen property is abolished; lost property is hung(?) at the city gate.

(15) Women of former days (could?) have two men, (but) for women of these days, that unreasonable liability(?) is abolished.

Text 4: Prices under Sin-kashid of Uruk

Source: Frayne, *Old Babylonian Period* (see Text 1), 454–63.

In his period of kingship, in the market values of his land, 3 gur of barley, 12 minas of wool, 10 minas of copper, 3 (measures of vegetable) oil cost 1 shekel of silver. May his years be years of abundance.

Text 5: Tariff in the Laws of Eshnunna

Source: Goetze, Albrecht. (1951–52). "The Laws of Eshnunna." *Annual of the American Schools of Oriental Research*, 31, 24–25.

1 gur of barley is (priced) at 1 shekel of silver

3 quarts of oil are (priced) at 1 shekel of silver

12 quarts of vegetable oil are (priced) at 1 shekel of silver

15 quarts of lard are (priced) at 1 shekel of silver

4 quarts of pitch(?) are (priced) at 1 shekel of silver

6 minas of wool are (priced) at 1 shekel of silver

2 gur of salt are (priced) at 1 shekel of silver

1 gur of (a spice?) is (priced) at 1 shekel of silver

3 minas of copper are (priced) at 1 shekel of silver

2 minas of refined copper are (priced) at 1 shekel of silver

Text 6: From the Coronation Prayer of Assurbanipal

Source: Foster, Benjamin R. (1993). *Before the Muses: An Anthology of Akkadian Literature*. Bethesda, Md.: CDL Press, 713–14.

... Just as grain and silver, oil, cattle, and salt (from the place called) Bariku are desirable, so too may the name of Assurbanipal, king of Assyria, be desirable to the gods ... May the [resident] of Assur obtain 30 gur of grain for 1 shekel of silver, may the resident of Assur obtain 30 quarts of oil for 1 shekel of silver, may the [resident] of Assur obtain 30 minas of wool for 1 shekel of silver. May the [great] listen when the lesser speak, may the [lesser] listen when the great speak, may harmony and peace be established [in Assur].

Text 7: Reforms of a Neo-Babylonian King

Source: Foster, *Before the Muses* (see Text 6), 763–66.

... nor would he make a decision concerning them (the cripple or widow). They would eat each other like dogs. The strong would oppress the weak, while they had insufficient means to go to court for redress. The rich would take the belongings of the lowly. Neither governor nor prince would appear before the judge on behalf of the cripple or widow, they would come before the judges but they would not proceed with their case; a judge would accept a bribe or present and would not consider it (the case). They (the oppressors) would not receive an injunction (such as this): “The silver which you loaned at interest you have increased five-fold! You have forced households to be broken up, you have had fields and meadowland seized, families were living in front and back yards. You have taken in pledge servants, slaves, livestock, possessions, and property. Although you have had silver and interest in full, these (mortgaged properties) remain in your possession!” ... For the sake of due process, he (the king) did not neglect truth and justice, nor did he rest day or night. He was always drawing up, with reasoned deliberation, cases and decisions pleasing to the great lord Marduk (and) framed for the benefit of all the people and the stability of Babylonia. He drew up improved regulations for the city, he rebuilt the law court ...

NOTES

1. Edzard 1976; for general discussion, see also Yaron 1993: 19–41.
2. Frayne 1989.
3. Adams 1981: 165; Weiss 1994.
4. Kraus 1971: 235–61.
5. Van de Mieroop 1992: 112–15.
6. Diakonoff 1982: 44–46.
7. Bottéro 1961: 113–64.
8. For the difficult matter of prices at this time, see Farber 1978; see also Snell 1982: 183–88.

9. Diakonoff 1956: 193–95 (takes a cautious position); Kramer 1963: 80–83; Von Soden 1954: 8–15 (“the first social reformer”).
10. Foster 1981.
11. Diakonoff 1958: 12–13.
12. Lambert 1965; Foster 1993: 763–66.
13. Lambert 1960: 110–15; Foster 1993: 760–62.
14. Lambert-Millard 1969; Foster 1993: 158–201.
15. Evans 1963: 20–26; Komoróczy 1976.

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Prophets and Markets Revisited

MORRIS SILVER

In *Prophets and Markets: The Political Economy of Ancient Israel (P&M)*, published in 1983, I put forward and supported a rather startling proposition:

The writing prophets of the eighth-seventh centuries—Amos, Hosea, Isaiah, Micah, Jeremiah, Zephaniah, and Ezekiel—were not poor peasants or shepherds, hermits, or eccentrics outside the mainstream of Israelite life. Instead, they were educated members of the Establishment who quite possibly had begun their careers as cultic priests of the second (or prophetic) order. They succeeded in committing the rulers of Israel and Judah to welfarist reforms. With the support of the state's armed might they unleashed a "prophetic revolution." The ill-conceived policies severely damaged the economy and morale.

In revisiting this thesis I will focus on several questions that will occur to the historical economist.¹ First, is it realistic to think of welfarist economic reforms in ancient societies generally and Israel in particular? Second, even if ancient societies could contemplate such reforms were they in a position to effectively implement them? Third, given the counterproductive nature of the prophets' economic ideas from a real world standpoint, why did the kings of Israel accept them as a basis for public policy?

Before turning to these questions, however, we should first recall the words of the prophets.

I. ISRAEL'S PROPHETS AND SOCIAL JUSTICE

As portrayed by Amos and his successors the Israelite society of the eighth-seventh centuries suffers terribly from severe oppression of the poor, injustice,

commercial dishonesty, and official indifference combined with love of “bribes” (actually fees paid for the issuance of writs and judgments [see *P&M* 127–28]). All of this is linked to the lifestyle of a new, well-to-do middle class. The central image is a familiar one, the blight of poverty amid affluence. Several examples should serve to demonstrate the point.²

Therefore because they have beaten the poor with their fists, though you have received from them choice gifts; you have built houses of hewn stone; but in them you shall not dwell. (Amos 5.11)

Listen to this you who devour the needy, annihilating the poor of the land, saying, “If only the new moon were over, so that we could sell grain; the sabbath, so that we could offer wheat for sale, using an ephah [measure] that is too small, and a shekel that is too big, tilting a dishonest scale, and selling grain refuse as grain! We will buy the poor for silver, the needy for a pair of sandals.” The Lord swears . . . “I will never forget any of their doings.” (Amos 8.4–7)

You must return to your God! Practice goodness and justice and constantly trust in your God. A trader who uses false balances, who loves to overreach, Ephraim [the Israelites] thinks, “Ah I have become rich.” (Hosea 12.7–9)

Ah, those who plan iniquity and design evil on their beds; when morning dawns, they do it, for they have the power. They covet fields, and seize them; houses, and take them away. They defraud men of their homes and people of their land. (Mic. 2.1–2)

Will I overlook in the wicked man’s house, the granaries of wickedness and the accursed short ephah? Shall he be acquitted despite wicked balances and a bag of fraudulent weights? Whose rich men [of the city] are full of lawlessness . . . I, in turn have beaten you sore . . . for your sins. (Mic. 6.10–13)

Learn to do good. Devote yourselves to justice and the wronged. Uphold the rights of the orphan; defend the cause of the widow. . . . If, then you agree to give heed, you will eat the good things of the earth, but if you refuse and disobey you will be devoured [by] the sword. (Isa. 1.17, 19)

Who of us can dwell with the devouring fire, he who walks in righteousness, speaks uprightly, and spurns profit from fraudulent dealings. . . . Such a one shall dwell in lofty security. (Isa. 33.14–16)

For among My people are found wicked men, who lurk, like fowlers lying in wait; they set a trap to catch men. As a cage is full of birds, so their houses are full of guile; that is why they have grown so wealthy. . . . They will not judge the case of the orphan, nor give a hearing to the plea of the needy, Shall I not punish such deeds. (Jer. 5.26–28)

Thus, if a man is righteous and does what is just and right. . . . If he has not wronged anyone: if he has returned the debtor’s pledge to him and has taken nothing by robbery; if he has given bread to the hungry and clothed the naked; if he has not lent at interest; if he has abstained from wrongdoing and executed true justice between man and man . . . Such a man shall live—declares the Lord God. (Ezek. 18.5, 7–9)

There can be little doubt that the prophets wished to reform an unjust society. Given their emphasis on the plight of the “poor,” “weak,” and “needy,” it is clear that they were thinking of welfarist economic reforms.³ Social injustice, the prophets believed, had to be eliminated by a resolute act of social will. And this will—that is, the necessary force—was to be supplied by the rulers.

We have the explicit testimony of the Bible that King Hezekiah was at least influenced by the social reformer Micah (Jer. 26.18–19), while Jeremiah 22.11–16 relates that King Josiah “dispensed justice and equity” and “upheld the rights of the poor and needy.” But this is only the tip of the iceberg of prophetic influence in royal circles. Isaiah was consulted by kings Ahaz (Isa. 7.1–9) and Hezekiah (Isa. 37, 38) and composed royal records of kings Uzziah and Hezekiah (2 Chron. 26.22; 32.32), and it is possible that Amos secured a similar position under Jeroboam II. Jeremiah was consulted by a representative of King Zedekiah (Jer. 21.1–2) and was an associate of the most powerful in the land. Zephaniah, very likely, was a powerful priest and relative of King Josiah (cf. *P&M*, chap. 13). The political program of the prophets as spelled out in the book of Deuteronomy was accepted and implemented in ca. 751 by Israel’s Jeroboam II and by the Judean kings Hezekiah and Josiah in ca. 716/715 and 621, respectively (cf. *P&M*, chap. 16).

But are there precedents in the ancient world for a welfarist reform agenda? This question will be explored in Section 3 of this chapter. First, however, it is necessary to consider the ideological underpinnings of ancient social reform.

II. THE INTELLECTUAL/IDEOLOGICAL FRAMEWORK OF ANCIENT SOCIAL REFORM

Ancient intellectuals, Near Eastern and Greek, were well aware that societies periodically experienced “dark ages” of economic and social retrogression. To judge by the Uruk Lament (twentieth century) and the myths of Atrahasis (early seventeenth century) and Erra (earlier first millennium), ancient Mesopotamian intellectuals were inclined to attribute cyclic socioeconomic disasters or “deluges” (Akkadian *abūbu*, *CAD* s.v.) to overpopulation or to economic evils, including, probably, the striving for material betterment and economic oppression. The appropriate interpretation depends on how one understands the motif of men (or lesser gods) disturbing the gods (or greater gods) with their “activity” or “noise” (Akkadian *riġmul(c)hubūru* or *(c)habāru*) (*CAD* *(c)hubūru* B). In the Atrahasis myth (Lambert and Millard 1969) and the Sumerian myth of Enki and Ninmah the lesser gods had to do hard labor digging canals under the supervision of the greater gods (Jacobsen 1987: 153–55; Komoróczy 1976). Their “noise” (cries of outrage) caused the awakening of the great god Enlil or Enki. Here we find the themes of activity and oppression rather than (or in addition to) overpopulation.

Pettinato sees a connection between the “noise” in the Mesopotamian myths and the *sē‘aqah* (“outcry”) heard by the Lord in Genesis 18.21 and the story

of Sodom and Gomorrah in Genesis 19 (Pettinato cited by J. J. M. Roberts 1985: 91). To this example we may add Isaiah 5.7: "And He hoped for justice, but behold, violence. For righteousness but behold an outcry." The word *outcry*, according to Von Rad (1972: 211), is a technical legal term designating the scream for help of one who suffers a great injustice. The cry was (*c*)*hāmās* "Foul play!" (Jer. 20.8; Job 19.7), a term that has the same force as Akkadian (*c*)*habālu* ("to oppress, wrong, deprive a person of something to which he has a right") (Speiser 1964: 117, n.5; CAD A.1). Finkelstein (1956: 329, n.7) who translates the Hebrew word as "violence" notes that it occupies a place in the biblical story of the flood (Gen. 6.5, 11–12) that is analogous to (*c*)*hubūru* in the Mesopotamian literature.⁴ Shupak (1992: 11, n.44) adds several Israelite examples: The woman whose son Elisha resurrected "cried" to the king for having taken her field and home (2 Kings 8:3, 5). Another woman, the wife of one of the sons of the prophets, "cried" to Elisha about her creditor who came to take her children into slavery (2 Kings 4.1). The poor man whose garment was taken as pledge "cries" to God (Exod. 22.26). Shupak (1992: 11) finds a quite similar pattern in Egypt: "From the terms *nis* and *nkhi*, it appears that the complaint or legal claim is close to the semantic field of 'cry,' 'call.' The wronged man addresses his cry to the judge charged with defending justice."

A further indication that the "activity," "noise," and "outcry" that disturbed the gods might have an economic/commercial nature or origin is that the Akkadian (*c*)*hubūru* also means "a type of large storage vessel" and "association, trade association." Similarly, in Arabic the root (*c*)*hbr* means "unite, be joined" and "tell, report," a meaning that, as Cazelles (1977: 193) observes, "suggests some kind of audible phenomenon."⁵

With respect to the Greek evidence, we might begin by noting the myth of Pandora and the *pitios* ("storage vessel") from which the evils of the world were "scattered" (Hesiod, *Works and Days*, 90–104). Even more striking is the apparent similarity of Akkadian (*c*)*hubūru* and Greek *hybris* ("violence, lust, outrage") (LSJ s.v.). Chantraine (1968 s.v.) states that the etymology of *hybris* is *inconnue*. The poet Theognis (perhaps during the first half of the sixth century B.C.E.) virtually identifies *hybris* with the striving for *kerdos* ("personal gain, profit") and with *koros* ("insatiability") of wealth, and he refers, significantly I suspect, to his fear that "perhaps a wave will swallow the ship" (Nagy 1985: 23, 42, 45, 53). Nagy (1985: 52, 57) adds citing Athenaeus, that the prime manifestation of the *hybris* of the city of Kolophon was "the luxuriance [*tryphê*] of excessive wealth," and he notes that for Hesiod (*Works and Days*, 213) the *hybris* of Perses manifests itself in his striving for excessive wealth.

Against this background it is easier to grasp why the motive force of social justice in the ancient Near East is *economic oppression*. The social justice/social reform scenario requires innocent *victims*, materialistically motivated *evildoers*, and righteous *saviors* who strike the evildoers down and rescue their victims.

The ancient Near East designated victims by terms more or less convention-

ally translated as “orphan,” “widow,” “poor person,” and “peasant.” The referents are much less real-world social groupings than intellectual constructs. That is, the terms refer to the *ideal victim*. This inference is amply supported in Mesopotamian social history by the mysterious *mushkēnu*, a term found in texts from the earliest periods. According to Dandamaev (1984: 643–44), who cites Speiser, the term is derived from “the verb *shukēnu* ‘to bow down,’ ‘to prostrate oneself,’ and, hence, came to have such nuances as ‘wretched, poor, humble, weak’.” Dahood (1981: 313) suggests that the literal meaning of the term may be “the one who emits laments.” Dandamaev (1984: 643) notes that a “great number of studies maintaining various opinions have been devoted to it [the *mushkēnu* problem].” The complexity of the problem and the inconclusiveness of the studies arise, I submit, from the fact that *mushkēnu* is an abstraction: the ideal victim, not a reference to persons with a concrete socioeconomic status (cf. Westbrook in this volume). This is equally true of Amos’ *dal* (Amos 2.7, 4.1, 5.11, 8.6). The Hebrew word *dal* is formally related to Akkadian *dullu* “misery,” “corvée work,” “work” (CAD s.v.). In Amos’ hands the *dal* is transformed from “free person who needs to work for a living” into “totally helpless person” (Fabry 1977: 222).⁶

The names assigned to the economic oppressors are more varied and less transparent than those given to their victims. Nevertheless, it seems clear that the oppressor is the businessperson in the inscriptions attributed to Nebuchadnezzar (“King of Justice”) (below). The writings of the classical prophets (above) very obviously target merchants and traders. One of their lines of attack merits special attention. In the historical books of the Bible the terms *Canaanite* and *Canaan* are often pejorative. The hostile attitude toward the inhabitants of the “promised land” is best understood as a reflection of the heated competition for cultic supremacy between the “jealous god” Yahweh and Canaan’s other gods (see Exod. 23.23–33; 33.2–3; 34.11–16; etc.; Lemche 1991: esp. 112–13). The classical prophets traded on this hostility by transferring the negatively loaded ethnic/geographic term *Canaanite/Canaan* to Israelites generally and, more specifically, to Israelite businesspersons. As Lemche (1991: 135–39) has pointed out, this process begins with Hosea 12.8–9, wherein the prophet writes the equation: (northern) Israel (Ephraim) = foreign Canaanite = merchant: “A Canaanite (trader) who uses false balances, who loves to overreach. Ephraim thinks, ‘Ah I have become rich.’” In an obvious reference to Nebuchadnezzar and Israel’s Babylonian exile, Ezekiel 17.4 adds: “He plucked its highest twig and carried it off to the land of Canaan (land of traders), planted it in a city of merchants” (Lemche 1991: 131). Zephaniah 1.11 writes the pejorative equation in the following form: “Wail, you inhabitants of the Lower Town of Jerusalem, for all the Canaanites (merchants) are destroyed, and the dealers in silver are all wiped out” (Lemche 1991: 140).

In the ancient Near East the savior hero is a nation’s “good shepherd”—that is, its king. Edzard (1974: 156) explains that

The ancient Orient paints a picture of the ruler as a just, kind shepherd. Just as the shepherd was responsible for the proliferation and well-being of his flock, so also was the ruler responsible for the welfare of his people. He looks out for the well-being of the flesh of the country, leads the people as well as the animals to green pastures, protects since Uru-KA-gina [a Sumerian ruler dated 2364–2342] the widows, and orphans, so that they will not be sold as slave to the rich and mighty, the king protects the weak from the strong so no wrong will be done to them. (Translation mine)

Thus, for example, a king of Isin, probably Enlil-bani (1860–1837), wrote that he had “established justice and righteousness”; and speaking of the *mushkēnu*, he added that “I sought out nourishment for them like sheep, and fed them with fresh grass” (Postgate 1992: 239). A hymn praises another king of Isin, Lipit-Ishtar (1934–1924), in the following terms: “Lipit-eštar you *rage against* the enemies, from evil and oppression you know how to save people, from sin and destruction you know to free them. The mighty do not perpetrate robbery, and the strong do not make the weaker ones into hirelings—Thus you established justice in Sumer and Akkad . . . O leading shepherd, youthful son of (the god) Enlil, Lipit-eštar be praised! (Vanstiphout 1978: 38–39).

Again, an inscription of the Babylonian king Nebuchadnezzar II (604–562) or one of his immediate successors tells that the rich were oppressing the poor until a king devoted to justice went into action:

The strong used to plunder the weak, who was not equal to a lawsuit. The rich used to take the property of the poor. Regent and prince would not take the part of the cripple and widow before the judge . . . [several obscure lines] “The silver which you have loaned on interest you have multiplied five times. You have broken up houses, you have seized land and arable land.” . . . He [the new king] was not negligent in the matter of true and righteous judgment, he did not rest night or day, but with council and deliberation he persisted in writing down judgments and decisions and arranged to be pleasing to the great lord [god] Marduk, and for the betterment of all the peoples and the settling of the land of Akkad. He drew up improved regulations for the city, he built anew the law court. (Lambert 1965: 8)

Let us now examine the facts of reform.

III. WELFARIST ECONOMIC REFORM IN THE ANCIENT NEAR EAST

Douglass North (1985: 560) believes that a distinctive feature of the premodern world is that “the state played no, or a very nominal, role, or was simply extortionist in its relationship to economic activity.” But a closer look at the historical record shows that the oldest civilizations experienced lengthy periods of unfettered market activity, even affluence, interspersed with periods of pervasive, not obviously extortionate, economic regulation by the state.

The evidence for welfarist type reforms is reasonably extensive in Babylonia

during the Old Babylonian period (1900–1600), whose most famous representative is Hammurabi (1792–1750). Prior to the reigns of Hammurabi in Babylon and his contemporary Rim-Sin in Larsa, there is evidence that commercial life had reached a high level of development. It was the custom of Rim Sin, Hammurabi, and his successors to issue edicts of “social justice/equity” (Lemche 1979). These *mīsharum* edicts may have been issued several times in one reign and at irregular intervals (Westbrook 1971a: 216–17; cf. Balkan 1974: 32–33). They mainly served to remit certain types of obligation and indebtedness. One edict excludes aliens from the benefit of a debt release and calls on creditors not to dun debtors for payment (cf. Westbrook in this volume). There are numerous references to the decrees in contracts, letters, and year formulae (Olivier 1984; cf. Balkan 1974: 33). Contracts for the sale of real estate mention that the transaction was concluded after the *mīsharum*, obviously to protect the purchaser against future litigation based on the *mīsharum*.

There were also more permanent measures. Their nature is not entirely clear, but they probably involved government intervention in the sale and rental of houses and fields; minimum wages; maximum prices of barley, wine, bricks, and other commodities; and maximum interest rates. A business letter from the reign of Hammurabi’s son makes reference to “the wage of the hired laborer written on the stele” (CAD s.v. *narû* A.1), possibly Hammurabi’s.

The evidence demonstrates that Near Eastern governments possessed the capability to enforce their economic measures and tried to do so. The point is illustrated by a text from the time of Hammurabi or one of his successors. In this text an individual petitions the ruler for the return of title to real estate that he purchased but was deprived of by a royal *mīsharum* edict. The sale tablets were reviewed by a government official, and a decision was rendered. Finkelstein (1965: 242) concludes: “Astounding as it must appear to our normally skeptical eyes, there is no way of discounting the factual account of our text that at the promulgation of the *mīsharum* formal commissions were established to review real estate sales and that they executed their mandate in a presumably conscientious manner.”

IV. WELFARIST REFORM IN ISRAEL

Given this historical background, it should not be difficult to believe that Israel’s rulers might also introduce welfarist reforms. It is true that we have no surviving *mīsharum* edicts as we do for Mesopotamia. However, we do have at least one fragment. In ca. 588 during Babylon’s first invasion of Judah, King Zedekiah made a covenant “that everyone should set free his Hebrew slaves, both male and female, and that no one should keep a fellow Judean enslaved” (Jer. 34.8–9). According to Jeremiah (34.11) the owners repudiated this *mīsharum* act. More important, we have a major source in Deuteronomy’s laws. As Weinfeld (1985: 317–18) points out, while these laws “are colored with ideological and utopian colors . . . this does not give us the right to dismiss the laws

as pure fiction.” Basically, Deuteronomy (meaning “repeated law” or “second law”) is a revision and expansion of the old divine law code in favor of the poor and underprivileged. There is little doubt that Deuteronomy should be associated with the “scroll of teaching” that, during Josiah’s reign (640–609), was “found” in the course of repairs of the Jerusalem temple by the priest Hilkiah (2 Kings 22). However, the presence of a variety of northern features has led a number of scholars to conclude that the basic core of Deuteronomy originated, not in seventh-century-Judah, but in eighth-century Israel. In the first place, the book obviously echoes the views and words of the northern prophet Amos, who was active in the first half of the eighth century (*P&M*, 132–33, 198–99). Further, several kinds of evidence make it reasonable to credit the authorship of Deuteronomy to the northern prophet Hosea, sometime in the second half of the eighth century (*P&M*, 194–98). The Bible provides several striking indications that the Deuteronomic program was not only first composed but was also implemented in the northern kingdom in ca. 751 (*P&M*, 213ff.). Now, let us set forth in summary form the character of Deuteronomy’s welfarist thrust.

Deuteronomy 14.28–29 commands that, triennially, a tenth part of agricultural output shall be put aside for the poor: “Every third year you shall bring out the full tithe of your field of that year but leave it within your settlement. Then the Levite who has no hereditary portion as you have, and the stranger, and the fatherless, and the widow in your settlement shall come and eat their fill.” Apparently, Deuteronomy 15.1–3 went beyond the earlier Mesopotamian practice by incorporating the *mīsharum* act in the Israelite constitution: “Every seventh year you shall practice remission of debts. This shall be the nature of the remission: every creditor shall remit the due that he claims of his neighbor or kinsman, for the remission proclaimed is of the Lord. You may dun the foreigner; but you must remit whatever is due you from your kinsmen [whatsoever of yours is with your brother your hand shall release].” The wealthy are enjoined not to “harbor iniquitous thoughts when . . . the seventh year is near and look askance at your needy countryman and give him nothing” (Deut. 15.9).

Exodus 21.2–3 states that “when you acquire a Hebrew slave, he shall serve six years; in the seventh he shall go free, without payment.” It should be understood that the “Hebrew slave” was not a captured but a contractual slave—he had either been enslaved for debt or had sold himself into slavery. Throughout antiquity the ability of an individual to borrow on the security of his own person or to sell himself or a family member into slavery was a mainstay of the capital market. Self-sale was especially important in financing training and migration (see *P&M*, 68–72). Exodus’ provision is revised by Deuteronomy (15.13), which mandates that when the “Hebrew man or woman” is set free he shall not go “empty-handed” but instead be supplied “out of the flock, threshing floor, and vat.”⁷ King Zedekiah’s *mīsharum* act in ca. 588 (see above) was probably repudiated because it mandated emancipation with compensation for

slaves who had served less than the legally required six years (see *P&M*, 234–35).

Deuteronomy 19.14 (see also 27.17) warns the Israelites that “you shall not move your neighbor’s landmarks, set up by previous generations, in the property that will be allotted to you in the Land that the Lord your God is giving you to possess.” The formulation is rather obscure; but I suspect, with several other scholars, that the aim is to outlaw the sale of land, or at least land in ancient Israelite settlements.

Scholars are agreed that Exodus 22.24–25 is the Bible’s earliest legal statement regarding the charging of interest on loans: “If you lend silver to My people, to the poor who is in your power, do not act toward him as a creditor: exact no interest from him. If you take your neighbor’s garment on pledge, you must return it to him before the sun sets. . . .” A prohibition on collecting interest from poor countrymen is understandable, perhaps even rational, within the context of early Israelite society, in which, presumably, production was mainly agricultural and for direct consumption. As Posner (1980: 15, 23) has pointed out, societies in this position have sought to provide “hunger insurance” by encouraging generosity toward neighbors and kinsmen. In this context a loan is often just the counterpart to the payment of an insurance claim in more advanced societies. But this line of explanation cannot explain why Deuteronomy (23.20–21) calls for more stringent and comprehensive barriers to the charging of interest, during the affluent, market-oriented eighth and seventh centuries: “You shall not lend upon interest to your brother: interest on silver, interest on victuals, interest on anything that is lent upon interest. You may lend to a foreigner on interest; but to your brother you shall not lend upon interest.” No mention is made of the economic status of the borrower, and therefore, the law seems to rule out all interest-bearing loans including consumption loans to the well-off and commercial loans. The blow to the Israelite economy might have been mitigated by access to, say, the Phoenician loan market. Or, perhaps, resident aliens gave loans at interest to Israelites much as in medieval times Jews lent to Christians and vice versa. But even the most cursory look at medieval European history starkly reveals the fragile nature of such expedients. In the absence of reasonably inexpensive international enforcement, loan defaults were not infrequent, while Jews and Lombards were hounded, robbed, and ultimately expelled. Any attempt to enforce the Deuteronomic regulation would have raised interest rates or would have led to credit rationing. Obviously, a ban on interest would have made it difficult for small farmers to acquire capital to irrigate their land.⁸

In the standard translation, Deuteronomy 15.1–3 calls for the cancellation of debts every seventh year. But the prohibition of interest in Deuteronomy 23.20 would have eliminated the main motive for lending. It would appear that the seventh-year “release” actually applied to the “pawns” held by the creditor—that is, to the labor or land pledged to the creditor in lieu of interest. Evidence of this practice is provided by a document (the Mesad Hashavyahu letter) dating

from the time of King Josiah. It records a complaint to the governor of a Judean fortress from the head of a team of reapers that the reaper's garment was seized (see *P&M* 238–39). The garment is obviously a pledge (see Exod. 22: 24–25), and the failure to return it probably indicates that the reapers had not performed the agreed upon harvesting services. To the extent that “interest on money, interest on victuals, interest on anything that is lent upon interest” is prohibited, economic actors can be expected to seek out second-best alternatives such as the disguise of illegal interest payments as the performance of labor (or land) services. If this interpretation of the Judean document is valid, we have indirect evidence that the Judean state sought to enforce the interest rate regulations and, further, perhaps, that Deuteronomy 15.1–3 sought to discourage disguised interest rates by means of a seventh-year remittance.

It should be added here that Deuteronomy 16.18–20 deals directly with the problem of bureaucratic resources by calling for the appointment of (salaried?) magistrates (judges) and officials (recorders? bailiffs?) in every town. Such officers would then be available to settle controversies “over homicide, civil law, or assault—matters of dispute in your courts” (Deut. 17.8–9). The availability of bureaucratic resources for enforcing the reform is also indicated by the reaper's complaint to a local official.

Leviticus 25.17–26, generally referred to by scholars as the “Holiness Code,” sets forth several economic reforms (for an excellent commentary, see Levine 1989). Clearly, this material represents a reworking of the laws in Deuteronomy (see Levine 1989: 273–74). Kaufman (1984: 281–82) notes that “Deuteronomy and Leviticus are . . . mutually incompatible systems, a fact that prohibited the practical acceptance of either when the Pentateuch was adopted as the *torah* of Judaism.” But if this material is to be properly utilized, it must be dated. It has been established that there are striking affinities between Ezekiel and the “Holiness Code.” This code contains expressions that otherwise occur in Ezekiel alone. Indeed, the similarities are so striking that several scholars have concluded that Ezekiel was the author or compiler of the “Holiness Code.” This analysis would place the Code of Leviticus in the early sixth century. In this event, the provision in the “Holiness Code” regarding interest-bearing loans takes on a new dimension of significance: “And if your brother be waxen poor, and his means fail with you; then you shall uphold him; as a stranger and settler shall he live with you. Take no interest [*neshekh*] or increase [*tarbīt* and *marbit*]; but fear your God; that your brother may live with you, you shall not give him your money upon interest, nor give him your victuals for increase” (Lev. 25.35–38).

Two points stand out. First, like Exodus, but unlike Deuteronomy, Leviticus makes explicit reference to the economic status of the borrower. Second, while Exodus and Deuteronomy both use the term *neshekh*, only Leviticus adds the additional terms *tarbīt* and *marbit*. The last two terms are translated as “increase” and are understood to refer to the collection of accrued interest, while *neshekh*, which means “bite,” is taken to refer to the deduction of interest in advance. What happened, I propose, is that in the years following Josiah's en-

forcement of the Deuteronomic law code, the Judeans learned the hard way that a blanket provision on interest is irrational and suicidal, so they retreated to the earlier provision of Exodus. On the other hand, they discovered that the word for interest in Exodus and Deuteronomy, *neshekh* (“bite”), opened an etymological loophole. Those who wished to lend and borrow legally insisted that only the deduction of interest in advance was banned. The argument was settled by adding the additional terms *tarbīt* and *marbit*.

Perhaps the damaging effects of a total ban on the sale of lands, or ancestral lands, was also perceived at this late date, for the “Holiness Code” does not, as does Deuteronomy, refer to the sin of moving ancient landmarks. Instead, the “Holiness Code” (Lev. 25.8–28) introduces a year of Jubilee (*yovel*, literally “ram” or “ram’s horn”) when “each of you shall return to his holding” and makes “provision for the redemption of land.” It is not entirely clear whether the redemption provision is available only to those who were poor at the time they sold their land. Perhaps such a provision might have been enforced by declaring certain years as years of poverty or “bad prices,” a practice noted in third millennium Sumer and first millennium Assyria. In second millennium Egypt we hear of “the year of the hyena when people were hungry.” Depending on how it was interpreted, the land redemption provision could have operated against long-term capital improvements, but it nevertheless would represent an improvement as compared to a total prohibition on land sales.

The net effect of the Deuteronomic reforms of the eighth and seventh centuries is difficult to ascertain. At the very least, they would have slowed Israel’s rate of economic growth. At the other extreme, the resource misallocations resulting from attempts to eliminate or inhibit land and capital markets and the work incentive effects of welfare payments had the potential to reduce the standard of living in absolute terms. The prophets also damaged the Israelite economy by undermining the oath, antiquity’s central contractual instrument. Given a world of slow communications and limited public enforcement of contracts, especially in international transactions, business persons lowered their costs of transacting by relying on promises witnessed by gods that were, by reason of this witness, largely self-enforcing (see Silver 1985: 14–18). But for Amos (2.6–8) to swear a commercial oath was to “profane God’s name” (cf. Jer. 34.13–16). The responses of the average Israelite to economic regulation were probably not so dramatic as those that he made to the attempt to convert him to the worship of social justice via cult centralization. Nevertheless, the effects of the economic policies must have added to the disenchantment and alienation of the masses and must have made a contribution to the destruction first of Israel and, finally, of Judah.

Why, then, did the kings of the Israelites agree to implement such counter-productive policies? The answer that comes immediately to mind is that the kings of Israel/Judah—and, earlier, of Babylonia, did not understand elementary economic principles and, consequently, were not aware that these policies would damage their economies. It is probably true that the kings were naive about

economics. Nevertheless, this line of explanation fails to recognize that ignorance is a constant. Why did the kings adopt the harmful policies when they did and not earlier?

V. THE ROLE OF TEMPLE CULTS IN ANCIENT SOCIETY⁹

It is well understood that as the gods offered safe and honest dealing—an implicit surety or guarantee—many temples of the ancient Near East and Greco-Roman world served as places of worship and centers of local and international commerce. Merchants made contracts and settlements and safely stored their valuables in temples. Some deities openly combated commercial opportunism (self-interest pursued with guile) and lowered transaction costs by actively inculcating professional standards. The protection enjoyed by visitors to marketplaces was extended to ports by means of a nearby temple. Commerce was also facilitated by the construction of temples at international borders, especially where, like islands and ports, they were well demarcated geographically.

Perhaps the most important contribution of gods and their temples to ancient society was the *oath*. Oaths involving property transfers and other civil and criminal matters were regularly sworn in temple courtyards before images or symbols of the host gods. In the words of the Egyptologist J. A. Wilson (1948: 156) the oath “called upon the name of a god or upon the god-king [in Egypt] and . . . therefore assumed very serious obligations vis-à-vis a force of far-reaching intelligence and penalizing power.” A Sumerian proverb puts the matter nicely: “An (unfavorable) legal verdict is acceptable, (but) a curse is not acceptable.” In short, by means of the oath-curse mechanism the temples of antiquity provided a measure of social control otherwise prohibitively expensive or unavailable in a world of high costs of communication.

In addition, the trust given to the gods by the populace permitted many temples to function as relatively efficient financial intermediaries or (possibly) banks and, thereby, to improve the allocation of resources in their societies. On the one hand, the temples were able to supplement tithes, donations, land rents, fees to keep valuables safe, and income earned by directly participating in agriculture and industry by attracting private deposits at relatively low (possibly zero) interest cost, while, on the other hand, the natural reluctance of debtors to default on loans given by gods or priests operated to lower both contracting costs and interest rates. The temples of antiquity were also centers devoted to the collection and preservation of economically and socially valuable knowledge.

Understandably the views of the gods on economic and social issues as expressed by their cultic spokespersons influenced ancient public policy, just as in later times. Beyond this, however, the gods possessed a formalized or constitutional role. In Mesopotamia, kings often boasted that a god (e.g., Ningursu) “took him by the hand,” meaning that the god approved his ascension to the throne (e.g., Ur-Nammu) or even selected him to rule (e.g., Urukagina). The joint participation of gods and kings in issuing codes of law is well known in

Hammurabi's Babylonia and, indeed, throughout the ancient Near East. Social reforms such as the remission of debts were often announced by means of cultic symbols—the raising of the torch or the blowing of the ram's horn. Less concretely, but more generally, it appears that in the Near East the governmental structures of humans and gods had to be congruent. One of the gods, the “divine counselor,” advised the gods; and his priest, called “father” or “steward,” advised the king.

While the Bible includes references to a divine council, such as we find in Mesopotamia, there is no conclusive reference to an office of “divine counselor.” Nevertheless, the reflections of a priest/royal advisor at the Israelite court are numerous and unmistakable. We know, first of all, that the prophet Samuel “told the people the manner of the kingdom and wrote it in a book and laid it before the Lord” (1 Sam. 10.25). Moreover, when, in 2 Samuel 24, King David conducts a census, no doubt as a prelude to imposing new taxes, he is opposed by “the prophet Gad, *David's seer*” (24.11; emphasis added). Isaiah undoubtedly spent part of his career as royal advisor, and I believe that Amos held this role in the northern kingdom. More concretely, Deuteronomy 17.14–15, the law book of the prophetic revolution, permits the Israelites to establish a monarchy, but the king must be one “whom the Lord thy God shall choose.” Clearly, a cultic input is demanded. The image of the King under Torah (i.e., under the cult) is stressed by the selection of motifs that suggest the dependence and subordination of the king (Kenik 1983: chap. 7). Before King Josiah of Judah initiated his welfarist and cultic reforms he read to the assembled populace “all the words of the book of the covenant which was found in the house of the Lord [by the priest Hilkiah, no doubt, Deuteronomy]. And the king . . . made a covenant before the Lord, to walk after the Lord, and to keep His commandments, and His testimonies, and His statutes, with all his heart, and all his soul, to confirm the words of this covenant that were written in this book” (2 Kings 23.2–3).¹⁰

So, then, why did the kings implement the perverse reforms put forward by the cultic spokespersons, the prophets? Because they believed that the prophets conveyed the word of God or because they thought it was suicidal to oppose them or because they thought it was good politics to go along with the reforms. The gods, we must understand, handed the king the “scepter of justice”; and if—and only if—he used it as they wished could he count on their blessings for a long and prosperous reign (Olivier 1979).¹¹

But again, this line of explanation is not intellectually satisfying. In the earliest Israelite literature Yahweh is a national god concerned primarily with the military security and material prosperity of his people. Threats of punishment and doom arise only in response to the worship of foreign gods whose exemplars are the Baalim. This perspective is radically altered by the classical prophets of the eighth century: Yahweh is transformed from a national god to a god of social justice threatening his own worshippers with destruction if they do not alleviate the plight of the poor. Why did this prophetic revolution take place

when it did? The fact that similar transformations have taken place in other places and times indicates that Israel's experience is not completely idiosyncratic and encourages the social scientist to seek a systematic explanation.

VI. AFFLUENCE AND ALTRUISM

A central theme of my 1980 study on *Affluence, Altruism, and Atrophy* (AA&A) is that altruism or the taste for helping others is one of the higher needs described by the psychologist Abraham M. Maslow. Review of a substantial body of behavioral evidence together with an examination of the implications of consumer choice theory¹² suggests that rising income markedly increases the demand for altruistic consumption. Consideration of historically affluent societies strongly suggests that the increased demand for altruistic consumption takes, in large part, the form of state actions intended to improve the lot of the poor.

The above considerations are quite relevant for our present theme. The altruistic transformation of Israelite cult and state took place against the background of increasing affluence. During the eighth and seventh centuries, specialized production centers emerged and applied mass-production techniques, most notably in the areas of ceramics and residential housing. Israelite agriculture exported its products and displayed notable technical sophistication, including a rather remarkable adaptation of the desert environment of the Negev. We find growing use of stone in building, warehouse facilities, firms with complex managerial structures, brand names, land consolidation (probably in the interests of exploiting new commercial opportunities), and the development of significant population centers such as Jerusalem and Samaria. During this period Israel-Judah also expanded territorially, gaining control over Bashan's great granary, over parts of the fertile Philistine Plain, over ports, and over the two major north-south highways.

The new wealth was consumed in a variety of forms. There was a significant extension in the quantity and quality of housing and other consumer durables. Second, the average Israelite enjoyed a diet that was tastier as well as more varied and nutritious. True bread (raised or leavened bread) was substituted for hard barley-cakes and gruel, and finely sifted white flour for the coarser varieties. Meat consumption also increased, as did its quality with the substitution of beef for mutton and of fattened for unfattened animals. Affluent Israelites, being necessarily "poor" in terms of modern amenities, chose their bundles of luxuries accordingly. They participated in great feasts, made lavish provision to memorialize their ancestors, and gave large public and cultic donations. (Note Hos. 10.1: "When his fruit was plentiful, he made altars aplenty; when his land was bountiful, cult pillars abounded.") Affluent Israelites enjoyed their many children, winter and summer homes, fine artwork, gardens, songs, and dramas and archaeological objects; they concerned themselves with wisdom and questions of human character and duty. And, of course, they sought to improve the position of those less fortunate than themselves.

CONCLUSION: ANCIENT ISRAEL WAS DONE IN BY RATIONALLY IGNORANT AFFLUENT CITIZENS

The kings of Israel/Judah implemented altruistic social reforms at the urging of the classical prophets. The prophets, and the cult generally, were responding to the desires of the affluent Israelites. Although this element is not entirely absent, the struggle for social justice should not be seen as a confrontation between the wealthy and the royalty. Rather, the wealthy, royal and nonroyal, sought with the guidance of the prophets to employ the state power to nullify the laws of economy and society. The elite was talking to itself.

The affluents did not understand the principles governing social and economic life, and they had no incentive to learn what was then known by intellectuals about these principles. As Schumpeter (1950: 215) observed: "Without the initiative that comes from immediate responsibility, ignorance will persist in the face of masses of evidence." Given the fact that masses of evidence were not available to the ancients and the difficulties of understanding the little that was known, even the most altruistic person would conclude that his cost of becoming informed about the effects of social policies would exceed the expected return in social improvement.¹³ To the ancients, and many moderns, the solutions to the problems of poverty and exploitation put forward by the classical prophets seemed to be obviously correct and to embody good common sense. The affluents, then as now, saw no reason to delve more deeply into the counterarguments put forward by other intellectuals. The latter, after all, were obviously flint-hearted reactionaries. Those cultic officials and intellectuals who refused to support the lofty goals of the prophetic revolution were branded as "false prophets," and, in one way or another, they disappeared from the scene. So in the end did ancient Israel. But in reaching this end the Israelites might console themselves with the thought that they had merely followed a path well trodden by other ancient and modern societies.

NOTES

1. A version of this chapter was presented at the 1992 Conference of the Western Economic Association. I wish to express my thanks to Thomas Figueira for his perceptive comments. This research was facilitated by a grant from a fund created by the will of the late Harry Schwager, a distinguished alumnus of the City College of New York, Class of 1911.

2. The Jewish Publication Society's (JPS) English translations of the Masoretic text of the Bible (see *P&M* 8, n.2) are recommended to the reader.

3. The Bible provides no evidence that popular unrest underlay the prophetic denunciations.

Jack Hirshleifer, in a letter (August 24, 1992), cautions me to distinguish between two types of reforms: (1) reforms that are consistent with efficient working of markets (e.g., regulation of weights and measures, protection against fraud), and (2) reforms that subvert the working of markets (e.g., prohibition of interest). However, I would not credit the classical

prophets of the later eighth and seventh centuries with an interest in the first category of reforms. I understand the references of the prophets to debased merchandise and corrupt measures as polemics: Business is evil and all businessmen are greedy cheats. Regulation of weights and measures was familiar in Israel long before Amos, Isaiah, and Ezekiel. We hear already of the “king’s weight” in David’s time (2 Sam. 14.26) and of the “shekel of the sanctuary” in Exodus 30.13 and Numbers 3.47. Similarly, those who “seized” (the verb *gzl*) fields did not take them by force; they purchased them. (Many ancient terms for “purchase” also mean “seize” [Silver 1985: 90; 1989: 51–52].) From the perspective of the prophets any “unequal exchange” is theft (Jackson 1972: 4–5ff.; cf. P&M 114–15, 127–28, 237–38; cf. Westbrook 1991: 13).

4. Sources for “activity, noise” in Near Eastern myth are Cagni 1977: 20–21, 29, n.12, 33, n.36, 41, n.84; Dalley 1989: 1–20; M. W. Green 1984: 254; Jacobsen 1976: 116–21, 227–81; Jacobsen 1987: 151–57; Komoróczy 1976: 11; Machinist 1983: 254.

5. There is a real question whether the Hebrew roots *ḥbr* (“to associate”) and *ḥbr* (“noise”) are really distinct. Sources for (*c*)*hbr* are Arbeitman 1981; Cazelles 1977: 193–97; Finkelstein 1956: 328; Maisler 1946: 10; and O’Connor 1986: 77–80.

6. Sources for victims are Fabry 1977; Finkelstein 1961: 96–99; Fensham 1962; Gray 1965: 218–22; Lanczowski 1960: 82–83; and Shupak 1992: 14–15. Similarly, a closer identification of the social group called (*c*)*hupshu*, a Semitic designation for persons of “low status,” remains unavailable (Lemche 1975: 140–42; Lemche 1985: 167; cf. A. R. W. Green 1983: 196–97).

7. That Exodus is earlier than Deuteronomy is indicated by various criteria. First of all, as already noted, there are marked terminological and ideological similarities between the books of the northern prophets Amos and Hosea and Deuteronomy. Another central consideration is that unlike Exodus’ Covenant Code (20.22–23.33), Deuteronomy 12.4–6 demands cultic centralization. Another clue is provided by references to iron (*barzel*). Sawyer (1983: 130) explains that “a conspicuous example of this is to be found by comparing the law banning the use of a metal instrument in the building of the altar in Exodus 20.25, where the metal is unspecified with the parallel in Deut. 27.5, where iron is specially mentioned as though by then it was in common use” Note also Deuteronomy 8.9 where reference is made to the “promised land” as “a land whose stones are iron.” But “analysis of iron artifacts from ancient Palestine, Assyria and Persia has conclusively shown that the manufacture of iron tools and weapons was still at a fairly primitive stage in most if not all parts of the ancient Near East until as late as the ninth or even eighth centuries BC” (Sawyer 1983: 129).

8. See P&M, chap. 2. It would appear that Deuteronomy 28.12 (also 11.10–14) not only anticipates this suggestion, but also rebuts it by denying the need for irrigation: “The Lord will open unto you His good treasure the heaven to give the rain of your land in its season, and to bless all the work of your hand; and you shall lend to many nations, but you shall not borrow.”

9. Much of the material in this section is extracted from chapter 1 of my *Economic Structures of the Ancient Near East* (1985).

10. Weinfeld (1991: 56–57) cites evidence indicating that Assyrian, Hittite, and Egyptian rulers were also expected to comply with written instructions pertaining to national socioreligious policy.

11. This “contract” is clearly reflected in Psalms 72.

12. To facilitate the exposition, all other higher needs are ignored and the consumer is viewed as a rational altruist choosing, subject to a budget constraint, only between

“others’ necessities” and “own amenities.” Altruism, represented by “others’ necessities,” is viewed within Maslow’s growth actualization framework as a higher desire. Thus, other things being equal, as money income increases, the quantity of altruism demanded increases in both an absolute manner and a manner relative to the lower desires represented by “own amenities.” However, since technological change has lowered the relative price of amenities, the modern consumer chooses to purchase more “own amenities” relative to “others’ necessities” than would, say, an ancient Israelite consumer enjoying the same level of real income (i.e., satisfaction). The American and the Israelite consumer move along different income consumption curves.

13. See AA&A (37–55) on the problems of rational ignorance and counterintuitive complex systems.

ABBREVIATIONS

AA&A. Morris Silver, *Affluence, Altruism, and Atrophy*

CAD. I. J. Gelb et al., *The Assyrian Dictionary of the Oriental Institute*

Chantraine: Pierre Chantraine, *Dictionnaire Étymologique de la Langue Grecque*

LSJ: Lidell, Scott, Jones, *Greek-English Lexicon*

P&M. Morris Silver, *Prophets and Markets*

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Demands for Land Redistribution and Debt Reduction in the Roman Republic

RICHARD E. MITCHELL

In every period of Roman history readers encounter cries for justice, and we can learn a great deal about Roman attitudes toward social justice by concentrating on the earliest demands for land redistribution and debt relief. Furthermore, instead of a comprehensive treatment of social justice, this discussion will serve as a “still” photograph to elucidate what remained static and what changed in the demands for social justice throughout Roman history.¹ Roman history, of course, was not systematically chronicled, nor was the city’s past interpreted until after 200 and our extant treatments of the earlier period are even later—much later.² The momentous social, economic, and political events of the second and first centuries shaped the portrayal of earlier events, and later laments were telescoped back into the early history of Rome. “The Roman revolution,” says P. A. Brunt, “which transformed an oligarchic Republic into the Principate of Augustus, had its origins . . . partly in the misery of the poor, in a social crisis . . . ; it began with the Gracchi and with agrarian reform, and agrarian reform remained a *leitmotiv* in the turbulent century that followed. . . . Modern accounts tend to obscure or even deny the unity of this theme throughout the period. It is true,” Brunt continues, “that in the earlier [Gracchan] phase reformers were more concerned to find remedies for social distress as such, and in the later to provide homes for veterans. But the Gracchan settlers and the veterans had two things in common: they were mostly countrymen, and they desired to obtain a secure livelihood by owning their own land” (1962: 69). I will concentrate on features accepted as accurate reflections of early Roman society, because, as Brunt further points out, there are no late Republican anal-

ogies to them, and they could “never have occurred in the time of any annalist” (1971: 639, n.1).

The Roman aristocracy was military in nature, and warfare was its primary occupation. When Livy introduced the reign of King Numa Pompilius, he said that Numa founded Rome anew because Romulus’s city had been *conditam vi et armis*, but Livy added that war dehumanized the human spirit and Numa wanted to soften the savage behavior of the Romans by introducing the cult of Janus, whose temple doors were to be closed when the state was at peace. Peace seldom broke out. The only time that the temple doors were closed before the Battle of Actium was after the First Punic War when a ceremonial closing highlighted the end of a vigorous campaign, but the occasion was immediately followed by a great deal of unceremonious military preparation and activity (Livy 1.19; Ogilvie 1960: 93–94). Livy understandably praised peace, but before his generation such an attitude was unique. In fact, war was commonplace and was considered natural between sovereign states, the enslavement of defeated peoples was the natural consequence of war, and the successful creation of empire by extensive warfare was a desirable goal. Moreover, while aristocratic “Romans accepted war and military service as fields in which a man’s *virtus* could be seen to best advantage” (Ogilvie 1960: 95), there is little doubt that warfare was also the most profitable endeavor undertaken during the archaic period and that economic motives—broadly perceived—were the principal impetus behind such activity. There is less doubt that warfare was not uniformly beneficial to all Romans even when victorious, and this brief investigation attempts to arrive at a better understanding of some social, economic, and political effects of continuous warfare on those who fought.³ Soldiers are the focus because the first cries for justice came from poor citizens oppressed by military service.

The story of Rome’s foundation is familiar, but it is worth remembering that the city presumably began as an asylum for paupers and outlaws, who had to steal women in order to be fruitful and multiply. In general, Roman kings were depicted as more popular with the masses descended from those paupers than they were with the aristocracy, which is to say that plebeians supported monarchy more than patricians did. We can skip over how earlier kings gained popularity among plebeians and will confine our survey of kingly behavior to Servius Tullius’ repayment of the debts of the poor from his own purse. The king thought it unjust that soldiers who had fought, won, and guaranteed liberty for others should lose it themselves. Servius declared that borrowers should not be imprisoned for their indebtedness, and he prohibited making loans on the security of free persons, that is, requiring free persons to give their bodies—and liberty—as security. Creditors had to be satisfied with the debtor’s property. The king also introduced the census so that property owners would pay their share of the war tax. “For I regard it as both just and advantageous to the public,” Servius said, “that those who possess much should pay much in taxes and those who have little should pay little” (Dion. Hal. 4.9). He declared that

public lands acquired by the military success of the poor should not be monopolized by the wealthiest citizens. *Ager publicus* was to be divided into lots and given to those without property so that they, as freemen, could cultivate their own lands and not have to work the lands of others as slaves. A list of debtors was compiled and tables set up in the Forum from which creditors were paid and an edict was issued demanding that those currently enjoying the use of public lands should give up possession and that those citizens without allotments of land should make their names known.⁴

Servius believed that patricians plotted against him because his program benefited the poor and because the patricians were not allowed to treat plebeians unjustly and to consider them slaves. Creditors were unhappy because they could not haul debtors off to prison, and wealthy and prominent individuals—that is, senators and patricians—who misappropriated public property were unhappy because they were not allowed to retain land acquired by the blood of the poor and to continue considering the land their private inheritance. The census also angered those who were no longer exempt from taxes and who were now required to pay their fair share. Mostly, however, the opposition to Servius was because he made everyone subject to written laws and made justice impartial; as a consequence the poor were no longer treated like chattel slaves (Dion. Hal. 4.11–13; cf. Livy 1.41.6, 46.1).

Servius is really a prototype and the reports of his written laws, land redistribution, debt relief, or collection of taxes are not reliable.⁵ Servius had seized the throne and courted the support of poor citizens to counter aristocratic opposition to his reign. The conservative views expressed by our sources overwhelmingly favor the status quo and firmly endorse the notion that those who called for land redistribution or debt relief actually were trying to parlay popularity into monarchy or tyranny. As the example of Servius demonstrated, anyone advocating popular reform was up to no good.⁶ But there can be little doubt that the motivation for reform during any period of Roman history was not simply the personal ambition or factional alliance of those who advocated redressing grievances.

The first cries for justice during the Republic repeat those heard during the monarchy, but Livy first reported them after the death of Tarquin Superbus when patricians began to indulge themselves excessively at the expense of plebeians. Heretofore plebeians were shown every deference out of fear they would make common cause with Tarquin. Following his death, those pressed into military service complained about losing their farms and becoming debtors as a result of service (Livy 2.21).

The best illustration of the aforementioned condition is the story of the first plebeian *secessio* in 494. The Romans had defeated the Latins at Lake Regillus and, although war with the Volsci was imminent, civil strife raged because the preservers of the state's liberty were losing their own: Soldiers were being enslaved for debt. Particularly graphic is the description of the old veteran who appeared in the Forum. Although disheveled, ragged, and emaciated, he was

recognized as a well-decorated courageous centurion whose scars of honor were visible on his chest. The crowd that gathered wanted to know how he came to this sorry state. He said that while serving during the Sabine War, his fields were destroyed, his house burned, and his animals driven off. Consequently, he was unable to pay the war tax and was forced to borrow. The interest mounted and, when unable to pay, he lost his ancestral lands and was seized and enslaved along with, Dionysius of Halicarnassus added, his two sons (Livy 2.23; cf. Dion. Hal. 6.22–26). Thus, our sources assign the origins of *nexum*, or debt bondage, to the period after 495, seeing it as an immediate consequence of military obligations and clearly part of the struggle between patricians and plebeians.

Here we encounter another familiar stereotype of military service, namely, that patricians and senators repeatedly used real and imaginary external threats to justify conscription and, thereby, to divert plebeian attention from their demands for reform. Levies were used “to bring seditious mobs under control,” and warfare was seen as a deterrent to popular programs (Brunt 1971: 640). The ploy was first used following the appearance of the veteran centurion. A riot nearly occurred when other *nexi* enslaved for debt poured into the streets. Plebeians applauded when Volscians were reported to be marching on Rome. The plebeians refused to fight and called on patricians to bear the hardships of war since they alone were enriched by it. The Senate convinced a proplebeian patrician consul, Publius Servilius, to win over the plebeians and defend the state. In return, the Senate supported Servilius’ edict making it illegal to imprison or fetter a Roman citizen—and, thereby, prevent him from enlisting. The property of soldiers would not be seized or sold, nor would their children or grandchildren be detained. Since debtors could no longer be legally detained, they rushed to join the army in considerable numbers and greatly distinguished themselves in the coming war (Livy 2.24–25; cf. Dion. Hal. 6.23–33, 40.1).

In fact, several pitched battles were fought with several different foes during a brief period, and when the victorious soldiers returned they fully expected Servilius’ edict prohibiting debt bondage to become law. However, Servilius’ colleague Appius Claudius was hostile to plebeians and began to condemn debtors and hand them over to their creditors. The soldiers demanded support from Servilius; but he failed them, and they lost faith in both the consulship and the Senate. Taking matters into their own hands, they prevented condemnation of debtor soldiers and beat up creditors who were now the ones threatened with loss of liberty (Livy 2.27). Neither the imminent danger of a Sabine attack nor Appius’ threat to arrest troublemakers and deal with all matters alone moved the plebeians—and, eventually, Appius and Servilius left office.

News of plebeian secret meetings prompted the Senate to instruct the new consuls to conduct a military levy because idle plebeian hands were the devil’s plaything. However, as long as plebeians were overwhelmed by debt, they refused enlistment. Some aristocrats wanted to meet their demands; finally, the consuls gave way, and Manlius Valerius was made dictator. Since his brother had carried the law granting *provocatio* to citizens, plebeians respected Manlius,

and he justified their respect by issuing another edict prohibiting debt bondage (Livy 2.2–8, 28–31). Valerius was thereby able to enlist a very large army—ten legions we are told—to confront the Aequi, Volsci, and Sabines. The warfare was successfully completed, and some conquered lands colonized, but Valerius resigned when the Senate supported moneylenders and again refused to outlaw debt bondage. To prevent plebeian sedition, the Senate tried to retain the soldiers under arms by insisting that they had taken the military oath to the consuls, not the dictator. Rather than kill the consuls—and, thereby, free themselves from their obligation—plebeians prudently marched out of the city to the Sacred Mount (Livy 2.32; Dion. Hal. 6.45; cf. Ogilvie 1960: 311). This first plebeian *secessio* “was essentially a military strike” (Brunt 1971: 640; cf. Ogilvie 1960: 309–14) whereby plebeians obtained the right to elect their own representatives, plebeian tribunes, modeled on the military tribunes of the legion (Varro LL 5.81; see Mitchell 1990: 139–48). Hereafter, plebeian tribunes led the fight for debt reform and land distribution. Clearly, those demanding justice were soldiers, although also called plebeians; and those who opposed their demands were patricians, senators, consuls, and other men of money and privilege. When their demands were not met, plebeian soldiers resorted to self-help, refused to fight, and threatened those who opposed them.

Because agriculture was neglected during civil strife, famine conditions existed, and there was a concomitant rise in grain prices. We are told that slaves and the poor certainly would have starved if external sources of grain were not found: Presumably they were the last fed and the first denied. Eventually, grain came from Etruria and Sicily, but plebeians found the price too dear. Marcus Coriolanus was among those who insisted that if the aristocracy’s old privileges were returned then the old grain prices would return (Livy 2.34; cf. Dion. Hal. 7.12). There are many references to famine resulting from shortages and to attendant increases in grain prices that followed shortages (e.g., Livy 2.9, 27, 52; 4.12–13, 52). In the early Republic, efforts to import grain were mentioned frequently (Ogilvie 1960: 256–58). Just as often the expectation of famine was the context for another stereotypical subplot in the ongoing conflict, namely, the danger that individual Romans would use popularity achieved from supplying grain—often at their own expense—in an attempt to create a tyranny (Livy 4.13; cf. *CAH* 7.2: 183–84).

The aforementioned attitudes certainly reflect late Republican aristocratic ideology and are not reliable indications of archaic sentiments. Demands for state subsidized grain distributions, for widespread agrarian reform, and for debt relief were all part of a general cry for social justice so familiar to those who know the history of the late Republic. Gaius Gracchus carried the first *lex frumentaria* in 123, and attempts to control grain prices or sell it at predetermined prices are even later.⁷ There certainly were grain shortages earlier, and, doubtless, Roman magistrates did what they could to alleviate the condition. Usually shortages were alleviated by demanding food, clothing, and other subsidies from the vanquished—to the victor goes the spoils (see, e.g., Livy 2.54.2; 7.37; 8.2.4; 9.41.5–

7; 9.43.6–21; 10–37.5). Defeat often resulted in enslavement or death for most soldiers and veritable starvation for most noncombatants—women, the elderly, children, and slaves (Livy 2.34.2–3). This was not the normal fate of victors, although poor plebeian soldiers constantly complained about indebtedness brought on by military service during the first two centuries of the Republic.

Great hardship arose when peasants were absent for months or even years from their lands, but this did not occur, as the tradition asserted, as early as the fourth-century war with Veii because the city was only a few miles from Rome. The war against Veii presumably lasted for ten years and resulted in the introduction of pay, *stipendium*, for soldiers, the collection of the war tax, *tributum*, to pay for it (Livy 4.59–60; cf. 5.11.5; Diod. 14.16.5), and the imposition of indemnities on defeated communities (Livy 5.27.15; Ogilvie 1960: 622–23, 688–89).⁸ Some tribunes opposed the introduction of pay because it required taxation to pay for it, and they demanded that soldiers be allowed to return home during the winter to revisit families and exercise civil rights (Livy 5.2–10). Veii is so near Rome that the argument is ridiculous, and the sentiments are appropriate only for a much later period. Moreover, “the absence of Roman coinage before the last quarter of the fourth century proves that earlier soldiers followed their leaders in full expectation of sharing booty. . . . From the beginning, the source of *stipendium* was the movable booty and the indemnity from defeated enemies, and sometimes the share weighed out—not counted out—to soldiers was considered inadequate. . . . [It was only in] the late third century that a . . . regular tax levied on property, *tributum*,” was collected to pay the troops, and it would appear that initially it was not collected from those who served (Mitchell 1990: 162–63). In other words, the depiction of the poor farmer burdened by prolonged campaigns and taxes in the early fourth century is rhetorical not historical.

At the time Rome was small, her enemies near at hand, and the depiction is inappropriate. Campaigns took place over weeks or days, and farmers were not away from their fields for prolonged periods; but they could suffer from hostilities or raids in their area. However, “it is not likely,” says Brunt, “that military service as such did him [the farmer] or his family much harm, though naturally it was another matter if he was killed and a widow and young children were unable to cultivate his land.” Death aside, military service was not a “substantial grievance early in the fifth century” (1971: 640–41). On the contrary, I suggest that Rome’s military success resulted in the personal economic success of those in the military who expanded the state, a fact underscored by noticeable shifts in emphasis that appear in the story that begins to unfold about events in the fourth century.

The Gallic sack followed hard on the war against Veii and exacerbated conditions: Both events produced a debt crisis. Manlius Capitolinus, aided by geese, not only saved the capital (Livy 5.47) he also saved many soldiers from being enslaved by selling his own property to pay their debts. The economic plight of plebeian soldiers is illustrated by the appearance of yet another brave centurion in bondage, and Manlius wonders if he saved the capital so that those who

defeated the Gauls could be enslaved as if the Gauls had won. Even the recaptured Gallic ransom was hidden to deprive plebeians of their share. Manlius claimed not only that the Senate and state appropriated public lands and funds but that they could end indebtedness if they wished. Indebtedness appears as a public issue, and Manlius insisted that the state reduce the indebtedness of those who helped to make Rome what she was. This is the same attitude expressed by Servius Tullius. Consequently, Manlius' goal in assisting the poor was characteristically viewed as *regnum*, and plebeians would desert him because he was also a threat to their liberty. Here Livy interjected a strange thought about those who helped, or tried to help, the poor. He reproached the multitude "because they always by their favours raised their champions to a dizzy eminence, and then at the critical juncture left them in the lurch." Spurius Cassius offered plebeians land and was destroyed, Spurius Maelius tried to save his fellow-citizens from starvation at his own expense, and now "it was so with Marcus Manlius, who finding a part of the citizens overwhelmed and sunk in debt, was dragging them out into light and liberty, when they betrayed him to his adversaries; the plebs fattened their own defenders for the shambles. . . . Had their half-pound measures of meal requited the saviour of their country?" (Livy 6.14–20; cf. old soldier, 2.23.2–7). This was the sum that Manlius received from each soldier for saving the capital (Livy 5.47.8). In other words, amidst the rhetoric we learn that soldiers were rewarded with grain and foodstuffs for their prowess, just as they received prisoners as personal slaves (Livy 4.34.4; cf. Livy 7.37).⁹

Thereafter, economic woes continued, though Livy suggests that colonial foundations alleviated the condition. Early Republican history has many examples of colonization following military success, and the juxtaposition makes it absolutely certain that land was considered booty and was therefore shared by victorious soldiers. According to the terms of the *foedus Cassianum*, even Roman allies were entitled to land in colonial settlements as their share of the spoils. But the implication that anyone who advocated granting the allies a share was aiming at tyranny is a sentiment taken directly from the Gracchan period (Livy 2.41–42; Dion. Hal. 8.69–80; cf. Ogilvie 1960: 337–45; and *CAH* 7.2: 326–32).

There were nearly two dozen agrarian bills before 367, beginning with the one sponsored by Spurius Cassius in the early fifth century. However, following the agitation and legislation in 367, the only agrarian law proposed until well into the second century was that of Gaius Flaminius in 232 (Polybius 2.21–8). In 367 the amount of public land that individuals could claim was limited to 500 *jugera* (Livy 6.35.4; cf. Appian *BC* 1.8); and although debt and usury remained issues, colonization became more and more a feature of the tradition and replaced demands for land. The reports of colonial foundations are reliable records of lands granted to soldiers as their share of the booty. The many references to agrarian reform concentrate on distributing lands taken from the enemy to the poor, but the clear implication is that the land went to soldiers. If reliable, the so-called plebeian agitators for agrarian reform were actually sol-

diers complaining about being cheated out of their rightful share of the booty—that is, land.¹⁰ In fact, judging from the lack of clear-cut Roman military victories before 390, it is entirely possible that the amount of booty and land that accrued to Roman soldiers before this date was limited.¹¹ Colonization becomes a more prominent part of the record precisely at the point when Roman military successes are more frequently and more reliably documented. Consequently, I conclude, soldiers received their share of the booty in the form of colonial allotments; and, therefore, plebeian demands for agrarian reform are not heard again until the second century when problems were entirely different but much closer to the rhetorical complaints attributed to the early Republic.¹² There is, moreover, a noticeable absence of famine notices in Livy beginning in the same period following the war with Veii and the Gallic sack (*CAH* 7.2: 133–34), which also suggests a dramatic change in the course of events following the defeat of Veii.

Roman soldiers are persistently and consistently portrayed as farmers of relatively small properties constantly in peril even without performing required military service. As K. D. White observes, the lot of the peasant farmers—“the so-called backbone of the Roman state before the rot set in”—was extremely harsh (1977: 9–10). According to Shelton (1988), the presumption that only property owners were eligible for military service has been taken as proof that “in the early republican period most men did own some land. Otherwise Rome would not have had an army large enough to make the conquests it did.” Shelton continues: “It is indeed one of the great ironies of history that Roman farmers who went to war to defend their property against a foreign enemy ultimately lost their property to fellow Romans and also lost farming jobs to slaves whom they themselves had helped capture” (1988: 153–54, n.153). Their plight is neither as great nor ironic as asserted because the idea that only Roman property owners fought is more rhetorical than ironical or historical.

Most Roman soldiers were not men of property. In fact, the rhetorical nature of the depiction is obvious. Latter Romans believed that

they were descendants of sturdy, self-reliant farmers who owned the small plots which they worked and who were willing to fight bravely to defend the land which they owned. They believed, in addition, that their ancestors had succeeded both in farming and in war because they had possessed qualities such as diligence, determination, and constancy, and these qualities became enshrined by generation after generation as traditionally Roman virtues. Small Roman farms, according to legend, had produced great military heroes who embodied these virtues and, with them, conquered all of Italy. The legends of these men were passed on from generation to generation, and there became firmly entrenched in the Roman national consciousness the notion that “Rome owed her greatness to a sturdy breed of smallholders, content with little above bare subsistence, and working their plots with their own hands. (Shelton 1988: 153, the quote is from White 1977: 5)

The aforementioned is accepted as historical because archaic soldiers are believed to have supplied their own armor and because the state introduced a fixed

property level for participation, from which the propertyless were excluded. The evidence for this view is not consistent, however, and we ought to concentrate our attention on soldiers as the first citizens rather than focus on small farmers as the first soldiers. In fact, we often hear of volunteer and even privately recruited forces (e.g., Livy 4.48–49; 5.16.5; 28.45–46; 29.1.8). Moreover, the idea that Gaius Marius first recruited *proletarii* flies in the face of considerable evidence (Brunt 1962: 74). *Proletarii* fought in the Pyrrhic War (Gellius 16.10.1), and Hannibal captured Roman slaves at Cannae (Livy 22–52.3). Later, in the Second Punic War, slaves were mobilized, and even prisoners and enslaved debtors were released on the condition that they serve. After acquitting themselves well, they were manumitted (Livy 23.32–35; 24.10–16; 25.20–22; 27.38; 28.10, 46; 29.5).¹³ Did Rome eschew the services of the propertyless and those below a particular minimum census level in favor of slaves? Hardly! It is abundantly clear that the so-called Servian classes were a later introduction and were designed to preserve the political—that is, electoral—strength of the wealthy (Mitchell 1990: 8–11, 155, 239–42). The underlying organizational principle of *comitia centuriata* was that more weight was given to the vote of the wealthy because *they*, not the small farmer, had greater military and economic responsibility. As a consequence, Cicero, in his *Republic*, says that Servius' centuriate system divided the population in such a way that the greatest number of votes belonged, not to the multitude, but to the rich, on the principle that ought to guide all republics, namely, "that the greatest number should not have the greatest power"; and Cicero added that "equality results in inequality since it allows no distinction in rank" (1.43; 2.39).

The original Roman aristocracy consisted of those wealthy individuals who supplied their own armor and horses. *Equites* were clearly the wealthiest and most privileged group in early Rome; and, originally, Roman aristocrats—senators, to be specific—belonged to the equestrian order. The most archaic feature of the *comitia centuriata* was the *sex suffragia*, the six centuries of equestrians who were the first ones to "break into sound"—that is, to vote. Eventually the *sex suffragia* were supplemented by infantry centuries, the Roman *classici*, drawn up in three lines of deployment. The aforementioned were all wealthy, and for our purposes there is no need to draw subtle distinctions between the various groups (see Gellius 6.13). But we do see a fundamental contradiction in both the ancient and modern depictions of those who fought for the early Roman state. Warfare is described as both an economic obligation and personal liability disproportionately borne by the rich landowners—*locupletes*—who were the chief beneficiaries of Rome's imperial success (cf. Cicero, *Repub.* 2.9.16; and Gellius 10.5). On the other hand, poor soldiers—that is, the plebeians—are portrayed as property owners indebted and enslaved by the very military obligation and successes that enriched the aristocracy. Something is wrong with any depiction that has small property owners fighting and agitating to gain access to small parcels of land distant from their current holdings (see Mitchell 1990: 7–10, 35–62, 154–55, 239–42).

Throughout the fourth century, Rome's military system did not consist of soldiers recruited according to property classification but consisted of soldiers bound by personal ties to particular chiefs for economic and, I would offer, military and political interests. The first phalanx was a coterie of men led by an aristocratic chief. It consisted of his clients, retainers, dependents, and tenants, not all of whom necessarily possessed sufficient property to arm themselves. They were "recruited" along with neighbors, kinsmen, friends, and even mercenaries. Prominent local headmen obviously were the only agents that the central authority had to mobilize into military units. The organization was advantageous to both patrons and clients, who were mutually dependent. For example, freedmen became clients of owners who manumitted them, and their status was that of dependent hoplites with military obligations to their patrons and, only subsequently, to the state. Clients and patrons were under a mutual obligation to ransom one another. The major change occurred with the transformation of these private, locally recruited military forces (hoplites and clients) into an army of soldiers publicly recruited from a considerably expanded pool of citizens, most of whom were without personal ties to Roman aristocrats. This change did not occur until the third century, at the earliest, and when it occurred there was a corresponding alteration in political life, which increasingly focused on the social, economic, and political concerns of the broader class of citizens. These concerns, in turn, were telescoped back into the story of Rome's early history by those who began to write about the past, and the plight of the original soldier was commingled with that of the later citizen after the two ceased to be one and the same (Mitchell 1990: 8–11, 48–52, 236–42, 253).

If we cannot assign property to every soldier, it is equally difficult to restrict aristocratic possession of *ager publicus* to 500 *iugera*. Moreover, before the second century, attempts to do so are premature and unnecessary. As we have seen, agitation for agrarian reform took the form of a proposal that land taken from the enemy should be divided into individual lots and given to those who conquered it. Innumerable references create the clear impression that very early in the Republic aristocrats possessed vast amounts of *ager publicus* illegally (Livy 4.48.2; 4.51.5). Even Licinius Stolo, who proposed the limitation in 367, was convicted of violating the limitation by emancipating his son and thereby obtaining 1,000 *iugera* (Livy 7.16.9). But, in fact, we know that large tracts of public land held in excess of the legal limit were commonplace and routinely ignored before the second century. Before that time, an individual generally occupied as much *ager publicus* as he could cultivate or "as his patrimonial resources would permit"; but even if he exceed the limit he suffered only a fine (CAH 7.2: 326). As in warfare, the patron-client relationship was originally mutually beneficial when it came to occupying and working expanded estates.

The wealthy had an advantage in the occupation of *ager publicus* because, in addition to using their extensive clientele, they could afford to use slave labor to work more land (Appian BC 1.7–9). These were not slaves purchased in a market, but were prisoners of war obtained by Roman soldiers as their share of

the booty, with commanders and officers obtaining the lion's share in this as in all spoils.¹⁴ Slaves worked the public lands occupied by wealthy Romans up to and in excess of the legal limit. Even after manumission, freedmen continued to work the land and were tied to their patrons, who easily converted their obligations into social, economic, and political clout. The patron for his part, also was obligated to look after the interests of the client (Gellius 5.13; 20.1.40; cf. Ogilvie 1960: 479–80). Until late in the third century there was no scarcity of *ager publicus* to occupy, and no profusion of people to demand it. Eventually, records of occupation were lost and lands began to be treated as ancestral property and annexed to private estates.¹⁵

We superficially have taken care of popular demands for agrarian reform, but what of the outrage expressed by those enslaved for debt? *Nexum*, or debt bondage as it is called, is an extremely complicated question, and only the essentials can be addressed. The primary detail to keep in mind, as in the case of demands by the poor for land, is that we are again dealing with soldiers. Agitation against enslavement for debt is a prominent feature of the internal struggles between rich and poor in early Roman society, and it is most vividly depicted by those manacled soldiers who had lost everything, including their liberty, in the service of their country (Livy 2.23–27; 6.14.3–5; 7.19.5; Ogilvie 1960: 296–99, 303). That *nexum* has a basis in fact is suggested by its prohibition, nearly two centuries after it was first promised, by a law that Livy describes as a new beginning of liberty for Roman plebeians (8.28). However, whatever *nexum* was and whatever the *lex Poetilia* outlawed in 313, “debt bondage was still known to Republican and classical law, and in particular afflicted the Sullan veterans. . . . It is indeed precisely in the late Republic that we have the best evidence that debt was a persistent social problem, and the annalists’ view that in early times it was aggravated, if not caused, by conscription helps to show how the problem arose much later” (Brunt 1971: 644).¹⁶ One interpretation, favored by many, is that the law “merely abolished the *nexum* as a form of labour contract; from now on only defaulting debtors were placed in bondage, following a judgement in court” (CAH 7.2: 334). Before they were abolished, such contracts were the primary means by which large landowners obtained laborers for their estates. However, “the improved economic conditions that resulted from successful warfare and extensive schemes of land assignation and colonization . . . meant that the plebeians were gradually freed from the necessity of entering into bondage. It is probable that by the start of the Second Samnite War (327–304 B.C.) the institution of *nexum* had already become a relic of a bygone age. Its disappearance did not, however, put an end to indebtedness, which persisted as a major social evil to the end of the Republic” (CAH 7.2: 334). It is also argued that prohibiting voluntary bondage contracts created a demand for labor on large estates and, thereby, increased the number of imported slaves (CAH 7.2: 334; cf. Finley 1982: 150–66).

Although this interpretation is attractive, I want to stress that *nexi* were depicted as having been soldiers and were also portrayed as soldiers mobilized

despite their bondage (cf. Livy 2.34.7–8 with 2.27.1). Slaves and imprisoned debtors, even criminals, served in the army during the Hannibalic War and were freed on condition of fulfilling military service (Livy 23.32–35; 24.10–16; 25.20–22; 27.38; 28.10, 46; 29.5). *Nexum* was outlawed, moreover, after the Caudine disaster (Varro *LL* 7.105; Dion. Hal. 16.5). In that battle, Roman soldiers were forced to surrender and were released under terms of an agreement subsequently disavowed by the Senate. However, the soldiers were not returned to Samnite captivity (Livy 9.2–11), but 600 equestrians were retained as hostages (Livy 9.5.5–12, 12.9, 14.14, 15.3–7). What resulted was the ransoming of Roman soldiers, and the son of one of those surrendered was left in poverty and became a *nexus* in order to pay his father's funeral expenses: a noble story, filled with *pietas*, and very little reliable material, except for the equation of the soldier with *nexum*—and, therefore, the association of *nexum* with ransom (Dion. Hal. 16.5). We have evidence suggesting that the state, beginning in the fourth century, used public funds to relieve debtors (Livy 7.21.5–8). Relief was not extended to citizens in general, but the idea of public payment of ransom may have started to take hold. One of the underlying principles of Roman service to the state, or of contractual obligations generally, is that one had to have property as security—or as a hostage, as one source said—for fulfillment of the task. For those without property, patrons or others could stand in. One of the laments of those who claim to have lost everything as a direct result of serving the state was that they were left without even enough money to ransom themselves (Livy 26.35.6). We hear little about ransoming Roman soldiers. The Gauls supposedly ransomed the city (Polybius 2.18.2–6, 22.5; cf. Livy 5.48–49), but, if true, it must reflect the ransom of Roman prisoners. Pyrrhus was said to have freed his Roman prisoners before the payment of ransom, but he sent along prominent men to fix the ransom price (cf. Livy 22.23, 59; Cicero, *Brutus* 55; Plutarch, *Pyrrhus* 20.1). Hannibal is contrasted with Pyrrhus, because Hannibal allowed captives to ransom themselves. Livy says that the price of equestrians was a bit higher than agreed upon when they surrendered. The Senate debated the ransom and the implication is that under normal circumstances public funds would have been used. However, because the prisoners were considered cowards, not even private arrangements were allowed; and the Senate refused even to permit loans to be taken out to pay the ransom price (Livy 22.52–61). Still later in time, we are told that *redemptores* who ransomed individuals were entitled to the labor of those redeemed until such time as those individuals repaid the amount of the ransom loan (Levy 1943: 159–76). It appears that in most cases an individual was obligated to work for a period of five years (inferred from Cicero, *Philippic.* 8.11.32) but that, contrary to the time when he was a prisoner, he recovered his citizenship. In the late fourth century, the state began to pay the ransom price of Roman soldiers captured by the enemy: at the very least, the rule was established that five years of labor was sufficient not only to discharge the debt owed to redeemers but also to discharge the debt of soldiers enslaved by Rome before the third century.¹⁷

As an historian, rather than a philosopher, my primary concern has always been whether what a state said about itself was true or not—and, if not true, how great a discrepancy there was between what was claimed and what was done. I have no reservation about condemning past societies for what we consider their failings but such criticism is not historical if the actions of the society in question are consistent with their stated principles. Freedom and equality are cornerstones of modern Western legal systems, but we must not assume that they were primary concerns of other societies unless they tell us so. In the case of Rome, the aristocrats—really oligarchs—who are our sources of information about Rome, depicted a society with “enormous differences in wealth and social power, and the upper class which determined its legal rules enshrined in them a code of values relevant to itself which cannot automatically be assumed to have been equally relevant to the lives and habits of the mass of people” (Crook 1967: 10). Cognizant of this fact, we readily admit that later conditions influenced the way in which Rome’s distant past was presented and that those who presented it got a great deal wrong even if in the process they preserved some reliable information. My point is this, the misery of the poor must have been impressed on the minds of Roman authors with extraordinary clarity to cause so many to see it as a constant condition. The speech that Tiberius Gracchus gave to the people, with which I close, must have been one of the most impressive.

The beasts that roam over Italy have everyone of them a cave or lair to lurk in; but the men who fight and die for Italy enjoy the common air and light, indeed, but nothing else; houseless and homeless they wander about with their wives and children. And it is with lying lips that their imperators exhort the soldiers in their battles to defend sepulchers and shrines from the enemy; for not a man of them has an hereditary altar, not one of all these many Romans an ancestral tomb, but they fight and die to support others in wealth and luxury, and though they are styled masters of the world, they have not a single clod of earth that is their own.” (Plutarch, *Tib. Gracchus* 9.4–5)¹⁸

NOTES

1. Crook (1967: 8) is the origin of the idea of a “still” photograph. Limitations placed on space preclude both publication of the complete lecture and full citations of ancient and modern bibliography. For dated events, see Broughton (1951), for the ancient testimony.

2. All dates are B.C.E.

3. Momigliano (1986: 189) sees our failure to comprehend the effect of continuous warfare as one of two difficulties, the other being misunderstanding the fifth-century plebeian movement by focusing on the compromise of 366.

4. Dion. Hal. 4.8–10, has the most complete, but needless to say, the most suspect account. Cicero, *Repub.* 2.21 (37–38) and Livy 1.41–48 supply other details incorporated into this summary. Galba (1991: 172–89) is an excellent survey of the regal tradition. All translations, unless noted, are from the Loeb editions.

5. Cf. Watson (1972: 100–105) for faith in regal laws, and Momigliano (1963: 95–121), for acceptance of much of the traditional outline.

6. See Livy 2.46: Servius used land grants to gain support from plebeians; 3.39.9 (cf. Ogilvie 1960: 470–71). Standard is Cicero, *Pro Sestio* 96: “Those who have wished their deeds and words to be pleasing to the multitude have been held to be *populares* and those who have conducted themselves in such a manner that their counsels have met the approval of all the best men have been held to be *optimates*.”

7. Broughton (1951: 514; cf. *CAH* 7.2: 133–34, 211, 409). In general see Rickman (1980).

8. Cf. *CAH* 7.2: 199–200, 299–302; and Crawford (1976: 204–7).

9. In general, see Shatzman (1972: 177–205).

10. Complaints about unfair distribution of booty are abundant and doubtless heavily influenced by late Republican conditions. See Livy 4.49; 5.19–22, 25–26, 32.8; cf. Livy 4.59.10. On the political importance of distribution of booty, see Livy 2.42.1; 3.31.4; 4.59.10; 6.4.11; 7.16.3, 24.9, 27.8; 8.29.14, 36.10; 9.13.5, 37.10, 42.5. On later experiences influencing early accounts, see Brunt (1971: 411). Cato the Elder spoke *de praeda militibus dividenda* stressing how the theft of military spoils by prominent men was the kind of public thief that resulted in a life of luxury (Gellius 11.18.18).

11. Presumably, minor military successes became major, and indecisive battles became victories. For example, in 446, Livy (3.70.14–15) reports a major victory over Aequi/Volsi, but says that no triumph was celebrated. On the other hand, “It is worth noting that as a general rule major Roman victories are comparatively rare in the tradition as we have it” in the period from 509 to 390 (*CAH* 7.2: 289). Harris (1979: 26) also notes that “through most of the middle Republic about one consul in three celebrated a triumph,” but the fact that there were only twenty-two triumphs and ovations during the entire fifth century “must suggest that the record is relatively free from contamination, and that it was not simply a fraudulent projection into the remote past of the conditions of the middle Republic” (*CAH* 7.2: 290).

12. Livy 4.47–49 is a good sample, but cf. Livy 6.5.2. On colonization, see Salmon (1969).

13. On slaves in the military, see Rouland (1977: 25–75); cf. Garlan (1988: 163–76).

14. Cf. Gelzer (1969: 21–22; Brunt 1971: *passim*; and *CAH* 7.2: 125–26, 312–13, 331–34, esp. 389).

15. In general, see the discussion in Bernstein (1978: especially chaps. 3–5).

16. See Livy 8.27, for the law he incorrectly dated; cf. Dion. Hal. 16.4–5; Varro LL 7.105; Val. Max. 6.1.9. See Sallust, *Catalina* 33 for the Sullan Veterans.

17. In general, see the discussion of Zuleta (1946–53, 2: 143–44). I want to thank Raymond Westbrook for comments made following the paper and for his 1988 and 1989 publication that will greatly contribute to the resolution of the *nexum* controversy.

18. In a later article, I will argue against the common view that the propertyless were only routinely enlisted after Marius’ reform. Soldiers were clearly depicted as propertyless from the beginning, and this was not an incorrect depiction.

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About the Editors and Contributors

HOWARD L. ADELSON is Professor of History at the City College of the City University of New York. Professor Adelson has taught as a visiting Professor at a number of American and foreign universities. He has served as Executive Officer of CUNY's Ph.D. Program in History, Chairman of City College's History Department, Director of the Graduate Seminar in Economic History at New York University, and Director of Studies of the Museum of the American Numismatic Society. Professor Adelson has been honored on a number of occasions and, in addition to having been made a Fellow of the Hebrew University (hon. caus.), he is also recipient of the Rothberg Prize from the Hebrew University in Jerusalem and a recipient of the Jabotinsky Centennial Medal from former Prime Minister Menachem Begin of Israel. His primary interests are in early medieval economic history and legal and political theory as expressed in political history and iconography. Among his most significant books are *Light Weight Solidi and Byzantine Trade in the Sixth and Seventh Centuries*, *Medieval Commerce*, and *A Bronze Hoard of the Period of Leo I*.

THOMAS J. FIGUEIRA is Professor of Classics and of Ancient History at Rutgers University. He has written widely in ancient Greek history and historiography. His most recent works are *Athens and Aigina in the Age of Imperial Colonization* and *Excursions in Epichoric History: The Aiginetan Essays*.

BENJAMIN R. FOSTER is Professor of Assyriology and Chairman of the Department of Near Eastern Languages and Civilizations at Yale University. He is the author of numerous studies of ancient Mesopotamian history and civili-

zation. His most recent major work is *Before the Muses: An Anthology of Akkadian Literature*.

FEREYDOUN HOVEYDA, author and statesman, had his early education in Iran and later received his doctorate in law and economics from the Sorbonne (Paris). He was at one time the Iranian ambassador to the United Nations. His recent publications include, in the French language, “Que veulent les Arabes?” (“What Do the Arabs Want?”) (1991) and “L’Islam bloqué” (“Islam Blocked”) (1992).

MARSHALL S. HURWITZ has taught religion at Columbia University and classical languages in the City University at Brooklyn College, the Graduate Center, and City College. He is an ordained rabbi and has published in the field of Hellenistic literature. Several articles on Hellenistic Jewish literature in the *Encyclopedia Judaica* were written by Professor Hurwitz.

K. D. IRANI is Professor Emeritus of Philosophy at the City College of the City University of New York. He has written extensively on the philosophy of mind, theory of action, philosophy of law, and ancient thought. His lectures on the philosophy of the Ancient Indo-European tradition were published in the journal of the K. R. Cama Oriental Institute.

THOMAS H. C. LEE is Professor of Chinese History and Chairman of the Asian Studies Department at the City College of the City University of New York. He taught previously at the Chinese University of Hong Kong where he also served as Director of the International Asian Studies Program. He has published widely on Chinese intellectual and social history in the United States, Japan, Hong Kong, Taiwan, and Germany. His books include *Government Education and Examinations in Sung China* and *China and Europe: Images and Influences in the Sixteenth to Eighteenth Centuries*.

S. TODD LOWRY is Professor of Economics and Administration at Washington and Lee University. His research interests and published articles deal with early economic and legal concepts and their influence on modern thought. He is the author of *The Archaeology of Economic Ideas: The Classical Greek Tradition* and is editor of and contributor to *Pre-Classical Economic Thought: From the Greeks to the Scottish Enlightenment*.

FARHANG MEHR is Professor of International Relations and International Law at Boston University. Prior to that, he served in ministerial positions in Iran and was Chancellor of the University of Shiraz in Iran. His most recent publication is “The Zoroastrian Tradition” (1991).

RICHARD E. MITCHELL is Professor of History at the University of Illinois,

Urbana-Champaign. His research interests extend from numismatics, archaic religion, and law, to the political development of the Roman Republic and the growth of the Roman Empire. Most recently he published *Patricians and Plebeians: The Origin of the Roman State*.

SCOTT N. MORSCHAUSER is Professor of History at Rowan College and has taught courses at the Johns Hopkins University, Princeton Theological Seminary, and the Smithsonian Institute. His principal area of study has been in ancient Egyptian warfare and diplomacy in the Ramesside Period. He is the author of *Threat-Formulae in Ancient Egypt: A Study of the History, Structure and Use of Threats and Curses in Ancient Egypt* and coeditor of *Biblical and Related Studies Presented to Samuel Iwry*.

GREGORY NAGY is the Francis Jones Professor of Classical Greek Literature and Professor of Comparative Literature at Harvard University. He served as the elected President of the American Philological Association in the academic year 1990–91. He is the author of *The Best of the Achaeans: Concepts of the Hero in Archaic Greek Poetry* (1979), which won the Goodwin Award of Merit, American Philological Association, in 1982. Other publications include *Comparative Studies in Greek and Indic Meter* (1974), *Greek Mythology and Poetics* (1990), and *Pindar's Homer: The Lyric Possession of an Epic Past* (1990). Professor Nagy's special research interests are archaic Greek literature and oral poetics, and he finds it rewarding to integrate these interests with teaching, especially in his course for Harvard's Core Curriculum, "The Concept of the Hero in Greek Civilization." He is currently the Chair of Harvard's undergraduate Literature Concentration.

M. G. PRASAD is Professor of Mechanical Engineering at Stevens Institute of Technology. He has some sixty-five publications in the fields of acoustics and vibration. In addition to his professional research interests, Dr. Prasad has been active in educational, cultural, and philosophical aspects of the Vedic heritage of India. He has organized several symposia on science and philosophy and has lectured widely on various topics dealing with Vedic heritage, such as the Sanskrit language, basics of *Sanatana Dharma*, *Bhagavad Gita*, and features of Vedic chanting. Dr. Prasad is a member of the Institute of Indian Culture, International Foundation for Vedic Education, and Astanga Yoga Vijnana Mandiram. He teaches *Vivekananda Vidyapith* and *Venkateswara Vidyalyaya* at the Hindu Temple and Cultural Society in New Jersey, where he also cochairs an education committee.

MORRIS SILVER is Professor of Economics and Chairman of the Department of Economics at the City College of the City University of New York. He has written widely about business organization, economic justice, and ancient economies. His books about ancient economies include *Prophets and Markets: The*

Political Economy of Ancient Israel (1983), *Economic Structures of the Ancient Near East* (1985), *Taking Ancient Mythology Economically* (1992), and *Economic Structures of Antiquity* (Greenwood, 1995). Professor Silver is also editor of and contributor to *Ancient Economy in Mythology: East and West* (1991).

RAYMOND WESTBROOK is Professor of Assyriology and Bible in the Near Eastern Studies Department of the Johns Hopkins University. Trained as a lawyer, his field of specialization is ancient law, as attested in cuneiform documents, the Hebrew Bible, and the records of early Greece and Rome. His books include *Old Babylonian Marriage Law* and *Property and the Family in Biblical Law*.